



# Village of Biscayne Park

640 NE 114<sup>th</sup> Street  
Biscayne Park, FL 33161  
(305) 899-8000

## Mayor and Commission

Roxanna Ross  
Mayor

Albert Childress  
Vice-Mayor

Robert "Bob" Anderson  
Commissioner

Steve Bernard  
Commissioner

Bryan Cooper  
Commissioner

Ana Garcia  
Village Manager

John J. Hearn  
Village Attorney

Kim Prenter  
Village Clerk

## **AGENDA**

### **REGULAR COMMISSION MEETING**

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Tuesday, January 12, 2010 - 7:00 pm

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. PUBLIC COMMENTS RELATED TO AGENDA ITEMS
5. PRESENTATIONS
6. ADDITIONS, DELETIONS OR WITHDRAWALS TO AGENDA
7. CONSENT AGENDA (Motion to be made for all as one or remove for discussion)
  - A. Approval of Minutes
    - September 1, 2009 Regular Meeting
    - September 30, 2009 Special Meeting
    - October 6, 2009 Regular Meeting
    - October 28, 2009 Joint Meeting
    - November 3, 2009 Regular Meeting
    - December 8, 2009 Regular Meeting
  - B. Approval of Federal Funds Forfeiture Expenditure
8. PUBLIC HEARINGS
  - None
9. ORDINANCES – 2<sup>nd</sup> reading
  - A. ORDINANCE 2009-4

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, GRANTING FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO THE VILLAGE OF

**BISCAYNE PARK, FLORIDA; PROVIDING FOR  
CONFLICT; PROVIDING FOR AN EFFECTIVE DATE  
(Continued from Commission Meeting March 3, 2009)  
DEFERRAL AFTER DISCUSSION PER VILLAGE ATTORNEY OFFICE**

**B. ORDINANCE 2009-7**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF  
THE VILLAGE OF BISCAYNE PARK, FLORIDA  
GRANTING AND RENEWING PEOPLES GAS SYSTEM,  
A DIVISION OF TAMPA ELECTRIC COMPANY, A  
FRANCHISE FOR THE PURPOSE OF SUPPLYING  
NATURAL, MANUFACTURED, AND OTHER GAS TO  
THE VILLAGE, PROVIDING FOR CONFLICT;  
PROVIDING FOR AN EFFECTIVE DATE**

**C. ORDINANCE 2009-9**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF  
THE VILLAGE OF BISCAYNE PARK, FLORIDA  
PURSUANT TO SECTION 166.041, FLORIDA  
STATUTES, TO AMEND ORDINANCE 2008-06  
ADOPTED ON SEPTEMBER 23, 2008 FINALIZING AND  
ADOPTING THE ANNUAL OPERATING BUDGET AND  
CAPITAL IMPROVEMENT PROGRAM FOR FISCAL  
YEAR 2008-2009, BY AMENDING VARIOUS PARTS OF  
THE BUDGET CONSISTENT WITH EXHIBIT "A",  
ATTACHED HERETO; PROVIDING FOR CONFLICT;  
PROVIDING FOR SEVERABILITY; PROVIDING AN  
EFFECTIVE DATE**

**10. RESOLUTIONS**

- A. Consideration of SNP Resolution 2010-2**
- B. Consideration of South Florida Park Coalition Resolution 2010-3**
- C. Consideration of FDACS – Forest Health Initiative \$24k non  
matching grant to trim trees Resolution 2010-04**
- D. Consideration of Resolution for Public Comment on 1<sup>st</sup> reading  
Resolution 2010-06**

**11. OLD BUSINESS**

- A. Report on ARRA Grant – Interlocal Agreement with Miami-Dade  
County**
- B. Discussion of Candidates for Ecology Board**
- C. Discussion on Replacement of Code Board and Code Review  
Board Members**

**12. NEW BUSINESS**

- A. Review and Approval of the 2010 Village Staff Holiday Schedule**
  - 1. Consideration of the addition of Presidents Day to the Holiday Schedule**

- B. Consideration and Discussion of Resolution 2010-05 – Deadlines for Agenda Submittal (Commissioner Anderson)
- C. Discussion for Village of Biscayne Park to Enter into Agreement with Recyclebank as a new recycling provider (Commissioner Cooper)

### 13. GOOD AND WELFARE (PUBLIC)

### 14. REPORTS

#### A. Committee Reports

#### B. Village Attorney Comments

- 1. Discussion and Review of Various Board Appointments and Terms
- 2. Discussion of Code Enforcement Fines

#### C. Village Manager Comment

- 1. Meeting with Bell David to discuss
  - i. Status of Discussion with North Miami Regarding Land Use Plan
  - ii. 5 year CIP Plan
- 2. Urban Forestry Grant – Discussion on lift purchase
- 3. Discussion on Village Clerk and Finance Department Staffing Options

#### D. Comments

- 1. Commissioner Anderson
- 2. Commissioner Bernard
- 3. Commissioner Cooper
- 4. Vice-Mayor Childress
- 5. Mayor Ross

### 15. ANNOUNCEMENTS -All public meetings are held at the Ed Burke Recreation Center 11400 NE 9<sup>th</sup> Court

Tuesday, January 12, 2010	Regular Commission Meeting, 7:00 p.m.
Monday, January 18, 2010	Village and Public Works closed for Martin Luther King, Jr. Holiday
Tuesday, January 19, 2010	Planning & Zoning Board, 6:30 p.m. (Tentative)
Wednesday, January 20, 2010	Parks & Parkways Committee, 6:00 p.m.

### 16. ADJOURNMENT

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in the proceedings should call Village Hall at (305) 899-8000 no later than (4) days prior to the proceeding for assistance.

**DECORUM**

Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.

## **SEVENTH ORDER OF BUSINESS**

**7A**



# Village of Biscayne Park

## MINUTES

### REGULAR MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court

Tuesday, September 1, 2009, 7:00 pm

Mayor Hornbuckle called the meeting to order at 7:15 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, and Chester "Doc" Morris and Vice-Mayor Bob Anderson. Present from Staff were; Mitchell Glansberg, Police Chief; Bernard Pratt, Public Works Director; Mitchell Glansberg, Police Chief; Holly Hugdahl, Acting Finance Director, Frank Spence, Village Manager; John Hearn, Village Attorney and Ann Harper, Village Clerk.

Commissioner Morris led the Pledge of Allegiance followed by a moment of silence.

#### **3. ORDER OF BUSINESS - ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA**

Commissioner Bernard added Item 11 E, Dade County taxes.

#### **4. PRESENTATIONS – Tab #4**

##### **A. Commendation for Sira Ramos from Police Chief Mitchell Glansberg**

Chief Glansberg commended Code Enforcement Officer Ramos for distinguishing herself in the line of duty. Residents Brett and Colleen Shinn thanked Mrs. Ramos for her actions in notifying the Police Lieutenant of a burglary in progress, which led to the arrest of suspects who broke into their home.

##### **B. Commendations for Police Officers Ray Atesiano and Larry Churchman from Police Chief Mitchell Glansberg**

#### **5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS**

**6. CONSENT AGENDA (Motion to be made for all as one or remove for discussion) - Tab #6**

- A. Approval of Minutes – Continued from Comm. Mtg. 7/7/09  
Email 7/7/09 from Commissioner Bernard**  
    (1) Regular Meeting – June 2, 2009  
    (2) 2<sup>nd</sup> Preliminary Budget Workshop June 10, 2009  
    (3) Special Meeting June 22, 2009  
    (4) 3<sup>rd</sup> Preliminary Budget Workshop June 22, 2009  
        Continued from Comm. Mtg. 8/4/09  
    (5) Special Meeting July 16, 2009  
        New minutes for approval  
    (6) Regular Meeting May 5, 2009  
    (7) Special Meeting July 29, 2009  
    (8) Regular Meeting – August 4, 2009

**B. Financial Report for the period ending 7/31/09**

**7. PUBLIC HEARINGS - None**

**8. ORDINANCES – FIRST READING TBS**

**A. ORDINANCE 2009-10**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF  
THE VILLAGE OF BISCAYNE PARK, FLORIDA  
GRANTING AND RENEWING PEOPLES GAS SYSTEM,  
A DIVISION OF TAMPA ELECTRIC COMPANY, A  
FRANCHISE FOR THE PURPOSE OF SUPPLYING  
NATURAL, MANUFACTURED, AND OTHER GAS TO  
THE VILLAGE, PROVIDING FOR CONFLICT;  
PROVIDING FOR AN EFFECTIVE DATE (1<sup>ST</sup> Reading)**

**9. RESOLUTIONS - None**

**10. OLD BUSINESS - None**

**11. NEW BUSINESS – Tab #11**

- A. Consideration of Management Services Proposals;  
Selection  
of Finalists; Schedule of Interviews**
- B. Consideration of appointment to Recreation Advisory  
Board  
to replace Tracy Truppman who resigned 8/9/09  
(Commissioner Morris' appointment)**
- C. Discussion of Ecology Board Membership**
- D. Recommendation for "Right to be Heard" section of  
every Board  
And Commission Agenda (Commissioner Bernard)**



**12. GOOD AND WELFARE (PUBLIC)**

**13. REPORTS**

**A. Committee Reports**

1. Parks & Parkways Advisory Board – Dan Keys, Chairman
2. Recreation Advisory Board – Roxanna Ross, Chairman
3. Pathways Ad Hoc Committee – Gary Kuhl, Chairman

**B. Village Attorney Comments**

1. Discussion of flood damage prevention ordinance

**C. Village Manager Comments**

1. Report from Police Chief Glansberg
2. Updates on various projects

**D. Commission Comments**

1. Commissioner Bernard
2. Commissioner Mallette
3. Commissioner Morris
4. Vice-Mayor Anderson
5. Mayor Hornbuckle

**14. ANNOUNCEMENTS** -All public meetings are held at the Ed Burke Recreation

Center 11400 NE 9<sup>th</sup> Court

- |                          |   |
|--------------------------|---|
| *Wednesday, September 2  | Pathways Ad Hoc Committee 7 pm                    |
| *Monday, September 7     | All Departments closed in observance of Labor Day |
| *Tuesday, September 8    | Biscayne Park Foundation 6 pm                     |
|                          | 1 <sup>st</sup> Budget Public Hearing 6:30 pm     |
| *Wednesday, September 9  | Recreation Advisory Board 6:30 pm                 |
| *Monday, September 14    | Planning & Zoning Board 6:30 pm                   |
| *Tuesday, September 15   | Code Enforcement Board 7 pm                       |
| *Wednesday, September 16 | Parks & Parkways Advisory Board 6 pm              |
|                          | Pathways Ad Hoc Committee 7 pm                    |
| *Tuesday, September 22   | 2 <sup>nd</sup> Budget Public Hearing 6:30 pm     |
| *Thursday, September 24  | Code Review Committee 7 pm                        |
| *Monday, September 28    | Planning & Zoning Board 6:30 pm                   |

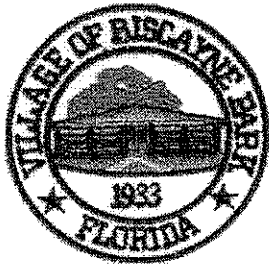
There being no further business to come before the Commission, the meeting adjourned at \_\_\_\_\_ p.m.

Commission approved \_\_\_\_\_

Attest:

\_\_\_\_\_  
John Hornbuckle, Mayor

\_\_\_\_\_  
Village Clerk



# Village of Biscayne Park

## MINUTES

### SPECIAL MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Wednesday, September 30, 2009, 6:30 pm

#### 1. Call to Order and Roll Call

Mayor Hornbuckle called the meeting to order at 6:35 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, Chester "Doc" Morris and Vice-Mayor Bob Anderson. Present from Staff were John Hearn, Village Attorney and Ann Harper, Village Clerk. Also present was Ana M. Garcia, Manager Designate.

#### 2. REVIEW AND APPROVAL OF THE PROPOSED CONTRACT WITH MANAGER DESIGNATE ANA M. GARCIA

Mayor Hornbuckle said this meeting is to discuss and approve the proposed contract with manager designate Ana Garcia and requested Attorney Hearn give an overview of the contract.

Commissioner Bernard pointed out there is nothing on the agenda about public participation. People showed up at 6:30 p.m. on a week day and should be asked whether there are any public comments.

Mayor Hornbuckle noted he was planning on doing this after Mr. Hearn spoke.

Attorney Hearn noted this is a standard contract. He has met with Ms. Garcia to review the contract and he proceeded to outline the redlined changes.

##### Section 1. Duties:

Commissioner Bernard asked if there is a need to state in the contract that there will be out-of-the norm hours since there is going to be after hour meetings. Attorney Hearn noted in his opinion it is not necessary because the contract states *work as required in order to carry out the responsibilities*.

##### Section 2. Term of Agreement

There is a six-month probationary period, a termination clause and an evaluation to be done after the probationary period. There will be a review of performance with an option for an increase given based on performance. There will also be an annual review. It was requested the word *written* be added before the word review.

It was agreed reference to a *decrease in salary* in Section 4.C be deleted.

## Section 5. Termination by the Village and Severance Pay

A discussion on severance pay ensued.

Commissioner Bernard noted three months severance is too much. He did not want a new commission to be tied to the decisions made by a previous commission. It was noted that three months notice can be given.

Ms. Garcia noted in the event a new commission takes over and wants to bring in a new Village Manager without reason she needs to protect herself. She also noted that a six month probation period for a senior manager is excessive.

The discussion concluded with the decision to keep three months severance pay and the six month probationary period would also remain. If termination is without cause and subsequent to Manager's probationary period the Village shall provide 90 days notice; if termination is to take place immediately the Village Manager will be paid a lump sum severance pay equal to three months salary.

## Section 6: Termination by the Village Manager

During the probationary period the Village Manager would be given the ability to leave with a 30 day notice. There was concern that this may not be enough time to find a replacement. Ms. Garcia noted it is her intention to not only develop herself but also her staff so there is another individual who can step in when she goes on vacation, etc. Subsequent to the probation the Village Manager may terminate at any time with a written 90-day notice of termination.

There was consensus the 30 day notice is acceptable.

## Section 7. Cell Phone:

It was agreed the Village Manager may use her own cell phone and be reimbursed the *reasonable* actual cost of the telephone. Ms. Garcia noted she wants to be accessible to the residents at all times.

## Section 9. Professional Development

It was noted it is important for the Manager to stay abreast of current topics in addition to maintaining a network and it was agreed the Village will pay for travel and attendance at conferences.

## Section 11. Time off - 18 days vacation, 12 days sick leave

The requested number of days was approved but to avoid a cash-out burden in the future the maximum vacation days carried over into the next fiscal year is 50% of annual accrual. Sick days at cash out would be valued at 100% of managers pay rate but only 50% of the maximum days would be paid out at manager's rate of pay. The use of vacation time will not exceed three days during the six month probation period.

## Section 12. Health and Dental Insurance

Insurance coverage and co pays were discussed. It was decided the Village will pay 100% of the premium for the Manager.

#### Section 14. Life Insurance

Life insurance will be provided at one times the annual salary.

#### Section 13. Retirement

Retirement will be set according to the State of Florida Retirement System - Senior Management.

#### Section 15. Other Customary Benefits

It was noted the Manager has the right to participate in any other benefits as provided to management employees.

#### Section 16. Indemnification

The Village shall indemnify the Manager against any liability or legal action occurring in connection with her duties as long as she is acting within the scope of her employment. Attorney Hearn noted the only exemption is if the employee has intentionally violated a person's rights.

A question was raised on indemnity and an intentional event. Attorney Hearn said that if they were sued they would show it was outside the scope of employment. Additionally it was noted the Village is still covered by its own insurance.

#### Section 17. Bonding

A discussion on bonding of officers ensued. The Village Charter states the Manager has to be bonded.

#### Section 18. Code of Ethics

The Village Manager will be an active full member of the International City/County Management Association (ICMA) and her conduct will be governed by their "Code of Ethics".

The inclusion of a non solicitation clause whereby the Manager cannot actively solicit employees for a period of one year if she leaves was discussed. This may be difficult to enforce and may affect other employees and their ability to get jobs through this indirectly. The Village does not want to be put in the position where all employees leave at the same time. It was decided to place a 90 day notice for the first year of employment.

Rewording of Section 4C was distributed and approved.

#### Section 7. Car Allowance

Ms. Garcia noted the Commissioners requested a very active individual who would be out and about the Village. A \$400.00 per month allowance was set based on a four day pay week. Days per week worked is set at five including one Saturday each month. Additionally Manager Garcia will drive to the town commission meetings and will be working with neighboring municipalities. There will also be the necessity to travel outside Dade County which justifies the need for the fuel allowance.

After discussion it was decided to take out the reimbursement section and accept the \$400 per month allowance for use of a private vehicle. The Village Manager will be responsible for the vehicle and not put in for reimbursement for mileage unless she travels to a distant conference.

#### Salary Discussion:

Ms. Garcia noted she analyzed the compensation based on the salary range average rate of comparable cities and the experience she brings which resulted in an average range of \$118,000. Pay range usually goes up or down 4 to 5 %. Taking the high at \$90,000 and the low at \$82,000 she came up with an average of \$86,000. With an average of \$118,000 for cities that are comparable to Biscayne with the experience she brings to the table and giving five day plus work weeks and a six month probation period she knows she can prove herself and feels the \$86,000 is fair. The Village is getting a person who is going to be a CEO and represent the city 24/7.

Commissioner Mallette noted after review of the survey presented and other information she is comfortable with a salary of \$86,000.

Vice-Mayor Anderson noted the El Portal Manager who was paid \$75,000 was new and just out of college and that Ms. Garcia had more experience but he also noted it is hard for him to be comfortable with Ms. Garcia starting at the same salary as the previous Village Manager who had more experience than her. He suggests a salary of \$82,500 or \$83,000.

Commissioner Bernard noted he understands the logic in the salary surveys and looking at her salary compared to others but he is not comfortable putting Mr. Spence's salary in relation to Ms. Garcia. He noted that Biscayne Park is like no other city on the survey. There are no businesses here which work a manager hard. Also the issues are few in this city. It involves getting a few things done and then staying the course. Salaries are lower here because it is not a complex city. He does not think the Village can pay someone with limited manager experience the same as it was paying someone with four years experience. After the probation period is complete, and improvements such as expense reduction have occurred then an increase may be warranted. \$75,000 is the maximum he is comfortable with. He would want to start lower so that she can prove herself and there is that incentive.

Ms. Garcia noted she knew the fact she has not been a City Manager was going to come up. Experience is gained managing large departments. She was not just responsible for parks and recreation; she was responsible for grant development, public information and overseeing capital projects. The Village is getting a very well rounded individual. She can work with the commission on the salary amount but must stay true to herself and what she believes she can bring to the table with her experience of 20 years and the last 12 years as a Senior Manager.

Commissioner Morris noted he understands the logic behind the numbers in the survey but those cities have commercial property and expensive homes. His recommendation is \$80,000 to start, an increase of \$3,000 after three months if the Village has been able to obtain additional savings and grant opportunities and at the one year mark after an evaluation \$86,000. He has nothing against paying somebody money if they have

provided the service that is saving the Village money and making it money. In the situation we are dealing with right now he would start at \$80,000.

Ms. Garcia suggested \$82,000 and then a yearly review. There is no need for a six month review as she will be working hard to prove herself regardless.

Commissioner Mallette noted she thinks we are judging Ms. Garcia at a different time than we were judging Mr. Spence when he started. Budgets at different levels have been cut and the situation of the economy and the grant schedule is different and she does not know if three months is enough time to show how much she brings in.

Vice-Mayor Anderson agreed and suggested a start at \$82,000. Upon the one year mark an evaluation will be made and with both savings and grant opportunities being guidelines, \$86,000 would be possible at that time.

Mayor Hornbuckle noted grants are important but expenses need to be lowered.

Commissioner Mallette suggested \$83,500.

Mayor Hornbuckle suggested \$83,000 and a one year evaluation be conducted.

Ms. Garcia noted during her 12 years she has never run into the red and has been creative and that is her pledge to the Village.

There was general consensus for the \$83,000 annual salary with a six month probationary term and an annual review of performance. Any salary increase will be based on performance.

The meeting was opened for public comment.

There was no public comment.

**Motion** was made by Commissioner Mallette, seconded by Commissioner Anderson to accept the Village Manager Employment Agreement as amended, the motion carried by voice vote, 5/0.

### 3. ADJOURNMENT

There being no further business, the meeting adjourned at 8:04 p.m.

Commission approved \_\_\_\_\_

Attest:

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John Hornbuckle, Mayor

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Village Clerk



# Village of Biscayne Park

## MINUTES

### REGULAR MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Tuesday, October 6, 2009, 7:00 pm

#### 1. CALL TO ORDER and ROLL CALL

Mayor Hornbuckle called the meeting to order at 7:00 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, Chester "Doc" Morris and Vice-Mayor Bob Anderson. Present from Staff were Ana Garcia, Village Manager; John Hearn, Village Attorney; Mitchell Glansberg, Police Chief; Tony Sanchez Police Captain, Holly Hugdahl, Acting Finance Director and Kim Prenter, Acting Village Clerk.

#### 2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

#### 3. ORDER OF BUSINESS – ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA

#### 4. PRESENTATIONS

**A. Presentation by Commissioner Morris** – Gave a list of his accomplishments; reorganization of charter from commission run to a manager run city, the ribbon cutting ceremony for the Village of Biscayne Park sign, the groundbreaking for the new public works building, obtaining a grant from the Rotary Club and assisting in the accumulating of \$1Million in the reserve account; and tendered his resignation so that he could take more time to spend with his family.

**B. Presentation by Police Department** - An award was presented to Police Chief Glansberg for his leadership, management, hard work and dedication to the Biscayne Park Police Department. An award was presented to Police Captain Sanchez for his hard work and dedication.

Recreation Advisory Board presented their recommendation on after school camp requesting the following be added to the agenda: review of the proposal for after school care Monday thru Friday and school holiday camp devoted to the educational, physical, emotional and social support of children; approve contract with Golden Gate and the standard 30% fee be reduced to 10% in order to allow the program to grow.

A short presentation was given by Mr. Gate regarding the after school camp. A handout was distributed summarizing the program.



Ms. Garcia noted the plan is to meet with the Gates and review the proposal including their background and report back to the commission for further discussion. Mayor Hornbuckle agreed with this approach.

Commissioner Mallette questioned if the Recreation Advisory Board spoke to any other providers. The Board had not, but noted the Village has the option to go out for RFPs.

## **5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS**

Linda Dillon, 712 NE 114 Street thanked everyone for giving her the opportunity to speak but she is very uncomfortable talking about items on the agenda before she has the chance to hear what the commission has to say. She welcomed Ms. Garcia and would like to thank whoever was responsible for changing the contract signing date from the Monday of that week to the Wednesday. She hopes in the future there will be no scheduling conflicts and will be glad to furnish calendars which list religious holidays.

Regarding 11B, items being placed on the website, she feels they have a very competent person in Maria and does not think it is necessary to have the commission voting to determine what is placed on the website.

Chuck Ross, 11166 Griffing Blvd. stated for the record he is a member of the Pathways Ad Hoc Committee. He welcomed Ms. Garcia and noted there was a vote at a Pathways Ad Hoc Committee meeting last Wednesday 6 to 4 against the pedestrian pathways project. The holding of a workshop and conducting a survey of the community was never accomplished. Professionals had not been consulted for advice on the feasibility of the project. The commission should recede on the scaled down concept of the original project which the committee was working on prior to the vote.

Dan Keys, 1107 NE 118 Street noted that he was one of those who voted against that project. He requested the commission look at the entire record in the minutes and make their decision accordingly.

The public comment section was closed.

## **6. CONSENT AGENDA (Motion to be made for all as one or remove for discussion) Tab #6**

### **A. Approval of Minutes -**

- Continued from Comm. Mtg. 7/7/09  
Email 7/7/09 from Commissioner Bernard
- (1) Regular Meeting – June 2, 2009
  - (2) 2<sup>nd</sup> Preliminary budget Workshop June 10, 2009
  - (3) Special Meeting June 22, 2009
  - (4) 3<sup>rd</sup> Preliminary Budget Workshop June 22, 2009  
Continued from Comm. Mtg. 8/4/09
  - (5) Special Meeting July 16, 2009  
Continued from Comm. Mtg. 9/1/09
  - (6) Regular Meeting May 5, 2009
  - (7) Email 9/1/09 from Commissioner Bernard  
Regular Meeting – August 4, 2009  
New Minutes for Approval

- (8) Special Meeting – September 8, 2009
- (9) Special Meeting – September 17, 2009
- (10) Special Meeting – September 22, 2009

**Motion** was made by Commissioner Mallette, seconded by Vice-Mayor Anderson, to approve the consent agenda.

Commissioner Bernard noted there were items regarding the stormwater and the hardening of the rec center he wanted to request be added to the minutes.

Commissioner Morris noted minutes are in summary form and are supposed to be a synopsis of what happens at a meeting. It does not have to be word for word. The only thing that is important in the minutes is the result of a vote.

Commissioner Bernard said there were notes he sent to the clerk which were distributed regarding the July 16th and the May 5th meetings and he wants to make sure they are part of the minutes that are being approved.

Commissioner Mallette said she made a motion to approve the consent agenda as is.

Mayor Hornbuckle said we have a motion to accept the consent agenda as is.

Commissioner Bernard asked if he could amend the motion to include those minutes.

Mayor Hornbuckle said we can approve the minutes as is which is what the motion is right now, as well as the two other items on the consent agenda.

Commissioner Bernard asked can we discuss this?

Attorney Hearn said you have a motion to approve the consent agenda. Anyone can pull whatever they want. Commission Bernard can pull B & C and proceed on discussions of any minutes at issue.

Commissioner Bernard pulled items 6A5, 6A6 and 6B & C.

Attorney Hearn noted those items have been pulled so your meeting is 6A 1, 2, 3, 4, 7, 8, 9, 10. The consent agenda is without discussion if you want to move forward and wish to approve the consent agenda that remains, you have a second, you take that vote and move forward and discuss those that are pulled.

Mayor Hornbuckle asked if Commissioner Mallette still wanted to move forward with the motion.

Commissioner Mallette said she wanted to move forward with the motion.

Mayor Hornbuckle asked Mayor Anderson if he still seconded.

Vice-Mayor Anderson said he just wants to make sure what we are voting on is to approve what the clerk has given us as far as her minutes.  
Mayor Hornbuckle said that is correct.

Commissioner Bernard said July 7th he had notes on the minutes that are part of this document and assumes that is part of what we are approving as well as the September 1 notes for the August 4th meeting.  
Commissioner Mallette proceeded with her motion.

Commissioner Bernard asked whether his notes had been included in the package to be approved.

Attorney Hearn noted this commission has to make the motion on including your minutes or not including your minutes. The motion is to include the minutes for 6A 1, 2, 3, 4, 7, 8, 9, 10 without any modifications.

Commissioner Mallette said correct that is the motion.

Attorney Hearn said Commissioner Bernard can pull whatever he wants to pull.

Commissioner Bernard requested with the exception of 8, 9 and 10, and all other remaining minutes be pulled.

Mayor Hornbuckle said the only ones that would be approved as they were dictated or written would be 8, 9 and 10.

Commissioner Bernard said correct.

**Motion** was made by Commissioner Mallette, seconded by Vice-Mayor Anderson to approve consent agenda items 8, 9 and 10. The motion carried by voice vote, 5/0.

**Motion** was made by Commissioner Mallette, seconded by Vice-Mayor Anderson to approve the remaining minutes as is.

Commissioner Bernard noted by approving minutes that are inaccurate then the record of actions are inaccurate from that point on. He noted that when an action is stated in the minutes, the direction of that action should also be stated.

Commissioner Mallette noted a motion was made, the items in there are referenced and an audio tape is available for the record for verbatim type transcriptions. On occasions when legislature feels it is important for clarity it is sometimes requested certain parts of minutes be typed verbatim. Perhaps in instances such as that the commission should request a verbatim accounting be made for the record. At this point we cannot have a backlog of unapproved minutes.

It was noted there is a resolution approving summary minutes but if during the meeting there was something that needed further documenting the clerk would be made aware of it.

It was noted according to Robert's Rules once a motion and a second were made the action is complete.

**Motion** was made by Vice-Mayor Anderson seconded by Commissioner Morris, to call the motion. The motion carried by voice vote, 4/1 with Commissioner Bernard voting no.

Mayor Hornbuckle said now we will have the original motion which is to accept the minutes as they were originally written, items 6A 1 through 7.

Mayor Hornbuckle called for a voice vote on the motion, which carried 4/1 with Commissioner Bernard voting no.

**B. Approval of State Financial Assistance Agreement for Stormwater Improvement Project**

Commissioner Bernard asked if there is a map of this project and it was noted there is. He stated that the required work may cost more than the Village has available. He would like to ensure there are adequate funds and a valid permit.

Attorney Hearn noted it is a three year agreement until 2011 and he is unaware of any deadline.

A discussion on the timeframe of funding the project ensued. It was noted the funds were given in 2008 the deadline is nearing and it is approaching termination and they will take the money back. The funding is on a reimbursement basis; money is reimbursed based on what is accomplished. The Village should move forward with this.

It was decided to move forward with the project. Commissioner Mallette and the Village Manager will research to see if there is any flexibility regarding the full amount of the match.

**Motion** was made by Commissioner Mallette, seconded by Vice Mayor Anderson to approve the agreement and if there are any issues or items of concern the Manager will bring it back at the next meeting.

It was noted this is a continuation of a process that has already begun, Phase I and Phase II have already been completed.

Mayor Hornbuckle called for a voice vote on the motion, which carried 5/0.

**C. Approval of State-Funded Subgrant Agreement (Recreation Center/EOC Hardening Grant for \$60,000)**

Commissioner Bernard asked if there were plans available. It was noted this is direct funds provided by the legislature. The structural integrity of the building was approved by an engineer and the next step for the project can begin.

A discussion on the agreement and funding ensued. The Village Manager will be reviewing all grants and available funding for work planned. At the November meeting she will present an overall assessment on the status of the grant programs.

**Motion** was made by Commissioner Morris, seconded by Commissioner Mallette, to approve the State-Funded Subgrant Agreement. The motion carried by voice vote 5/0.

## **7. PUBLIC HEARINGS – ORDINANCES – SECOND READING**

### **Ordinance No. 2009-8**

**AN ORDINANCE OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, REPEALING SECTIONS 6.5-1 THROUGH 6.5-7 OF THE VILLAGE OF BISCAYNE PARK CODE OF ORDINANCES; CREATING NEW SECTIONS 6.5-1 THROUGH 6.5-6 ADDRESSING FLOOD PREVENTION AND PROTECTION IN THE VILLAGE OF BISCAYNE PARK, FLORIDA; PROVIDING FINDINGS OF FACT; PROVIDING A SHORT TITLE; PROVIDING A STATEMENT OF PURPOSE; PROVIDING OBJECTIVES; PROVIDING DEFINITIONS; PROVIDING JURISDICTION; PROVIDING A BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD; PROVIDING FOR ESTABLISHMENT OF DEVELOPMENT PERMITS; PROVIDING FOR COMPLIANCE; PROVIDING FOR ARROGATION AND GREATER RESTRICTIONS; PROVIDING FOR INTERPRETATION; PROVIDING FOR A WARNING AND DISCLAIMER OF LIABILITY; PROVIDING PENALTIES FOR VIOLATION; PROVIDING FOR DESIGNATION OF LOCAL ADMINISTRATOR; PROVIDING PERMIT PROCEDURE; PROVIDING DUTIES AND RESPONSIBILITIES OF THE BUILDING OFFICIAL; PROVIDING PROCEDURES FOR VARIANCES FROM THIS ORDINANCE; PROVIDING GENERAL AND SPECIFIC STANDARDS FOR HAZARD REDUCITON; PROVIDING STANDARDS FOR SPECIAL FLOOR HAZARD AREAS WITH ESTABLISHED BASE FLOOD ELEVATIONS AND ALL OTHER IDENTIFIED FLOOD HAZARD AREAS; PROVIDING FOR STANDARDS FOR SUDIVISION PROPOSALS; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE (2<sup>nd</sup> Reading)**

Attorney Hearn read the title of the Resolution.

Mayor Hornbuckle opened the public hearing. No one came forward to speak, and the public hearing was closed.

**Motion** was made by Commissioner Morris and Vice Mayor Anderson, seconded by Commissioner Mallette to accept the 2<sup>nd</sup> reading of Ordinance No 2009-8.

Mayor Hornbuckle called for a roll-call vote. The motion carried as follows:

AYES: Mayor Hornbuckle, Vice-Mayor Anderson,  
Commissioners Bernard, Mallette and Morris.

NAYS: None

## **8. ORDINANCES – FIRST READING**

### **A. ORDINANCE 2009-7**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AND RENEWING PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, A FRANCHISE FOR THE PURPOSE OF SUPPLYING NATURAL, MANUFACTURED, AND OTHER GAS TO THE VILLAGE, PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE (1<sup>st</sup> Reading)**

### **B. Approval of Non-Exclusive Franchise Agreement Between the Village of Biscayne Park and Peoples Gas System, a Division of Tampa Electric Company**

## **9. RESOLUTIONS**

### **RESOLUTION #2009-15**

**A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AUTHORITY TO ANA M. GARCIA AS VILLAGE MANAGER TO SERVE AS A SIGNATORY ALONG WITH THE VILLAGE COMMISSION ON ALL BANKING DOCUMENTS RELATED TO THE STATE BOARD OF ADMINISTRATION INVESTMENT ACCOUNTS FOR THE VILLAGE OF BISCAYNE PARK; PROVIDING FOR AN EFFECTIVE DATE**

Attorney Hearn read the title of the Resolution.

**Motion** was made by Vice Mayor Anderson, seconded by Commissioner Morris to approve the Resolution. The motion carried by voice vote, 5/0.

## **10. OLD BUSINESS - None**

A finance report was added to the agenda based on information received late yesterday. Due to a change of 1.14% in property values the option of increasing millage by \$16 per household or taking the funds from reserves was discussed. A decision must be sent to the property appraiser by noon on Friday. It is less than 1%.

The Finance Director stated that the shortfall is an increase of \$16 per household, or a total of \$16,669, and we already have \$23,809 coming out of surplus for the adopted budget.

The dollar amount previously voted on for revenue coming in on property taxes (the trim) and by raising the millage rate will bring back the same dollar amount that was approved on the budget. The millage rate needs to be changed to get back to what had been approved during the budget cycle.

It was discussed to raise the millage to balance it out and if in the next two days staff can come up with savings then looking forward to the next budget year the residents may realize the savings at that point.

Mayor Hornbuckle opened it up for public comment.

Fred Jonas, 918 NE 119 Street said we live in a specialized quiet neighborhood, there is no business here and we like it that way. It seems we should be willing to go a little bit of a distance to keep this neighborhood the way we like it, to keep it functional and if it costs each of us an extra \$16 for the year to keep things the way they are now it will allow us to have the advantages we have it seems to me a very small price to pay and cannot imagine it will be a problem with anybody.

Gary Kuhl, 777 NE 111 Street concurred and thinks trying to come up with savings in the budget before Friday is not going to happen.

Bob Kopcsik, 720 NE 116 Street questioned why the budget we propose and submit does not coincide with what they tell us. It was noted they must have updated their projections in the Property Appraiser's office.

Commissioner Bernard stated that based on his review of the budget, there is about \$50,000 that we could save, including \$10,000 in the new phone contract, but since there is likely a shortfall for 2008-09, it would be long gone if there is a deficit of greater than \$50,000.

**Motion** was made by Vice Mayor Anderson, seconded by Commissioner Morris to change the millage rate to 8.9933.

Mayor Hornbuckle would like to leave the millage where it is and ask the Village Manager to find the additional money.

Mayor Hornbuckle called for a voice vote on the motion, which carried 4/1 with Mayor Hornbuckle voting no.

## **11. NEW BUSINESS**

### **A. Assignment of Contract for Auditing Services from Alberni, Caballero & Castellanos, LLP to Alberni, Caballero & Company, LLP Due to Change in the Name of the Firm. (Village Manager)**

Attorney Hearn noted due to the resignation of a named partner, Elias Castellanos, the firm is changing its name. Correspondence from Nestor Caballero detailing the circumstances is attached. Under its contract with them the commission will have to approve the assignment to the new company.

**Motion** was made by Vice-Mayor Anderson, seconded by Commissioner Morris, to approve the assignment of auditing services to the new company. The motion carried by voice vote, 5/0.

**B. Authorization to Prepare a Resolution Stating that Nothing Will Be Placed on the Village Website Without Prior Approval of the Village Manager or a Majority of the Commissioners (Vice-Mayor Anderson)**

Vice-Mayor Anderson noted this was placed on the agenda in order to proceed with a resolution of policy that the Village should have a chain of command on what is placed on the website. There presently is no written policy. Information needs to go through the Village Manager or the commission before it goes on the website.

**Motion** was made by Vice-Mayor Anderson, seconded by Commissioner Morris to authorize preparation of the resolution.

Maria has done a good job and it was noted this is just a policy it is not a reflection of the person who is taking care of it.

After discussion there was general consensus that the Village Manager will be sure everything placed on the website has her approval or would be of minor consequence.

Vice-Mayor Anderson withdrew his motion and Commissioner Morris withdrew his second. It was requested the Clerk or Manager research meeting minutes to see if a motion was previously made on this issue.

**C. Discussion Regarding Scheduling of Meetings So They Do Not Conflict with any Religious Holidays (Vice-Mayor Anderson)**

Vice-Mayor Anderson noted there are numerous religious holidays and before meetings are scheduled a calendar should be reviewed to ensure no meetings are scheduled to coincide with a religious holiday.

Mayor Hornbuckle said we need to be more sensitive to that. There was an issue with a previous meeting and apologies were made.

**12. GOOD AND WELFARE (PUBLIC)**

Fred Jonas voiced favor in reopening the after school program.

Dan Keys suggested the resolution designating responsibilities could be prepared prior to the meeting for presentation. If facts are incorrect in the minutes they can be corrected at the meeting and made part of the new minutes. He questioned where the generator will be placed in this facility and it was noted it will be a portable generator.

Karen Cohen, 11323 NE 8 Avenue welcomed the new Village Manager and said everyone is very excited. She introduced herself as the secretary to the Ad Hoc Committee and stated the minutes of their meeting will be forthcoming. The committee is trying to get information, have access to the information and be able to ask questions of those who may have the answers. She urges the commission to listen to what the committee has to say.



### **13. REPORTS**

#### **A. Committee Reports**

##### **1. Parks & Parkways Advisory Board – Dan Keys, Chairman**

Mr. Keys said she did not believe the commission received the minutes of their last meeting but there was a motion in those minutes requesting that the Parks Department be able to work with the Manager to plant oak trees specifically in three areas; 14th street along the right-of-way; the north east section of the community on the right-of-way; as well as filling in empty spaces.\

**Motion** was made by Vice Mayor Anderson, seconded by Commissioner Mallette to permit the Committee Chairperson to work with the Manager and proceed with planting the oak trees.

Commissioner Bernard noted that a committee should bring their recommendation forward to the commission and the commission should direct the Manager. The committee is now requesting to work directly with the Manager leaving out the commission. It is not the Advisory Board's role, responsibility, authority or liability to do so.

Mr. Keys stated absolutely, that is why we will work through the Manager who runs the Village and directs the day-to-day operation.

Commissioner Bernard said he thinks it takes it out of the sunshine.

Commissioner Morris noted a Committee is supposed to report to the commission, the commission decides whether they want to accept that or negate that and then they direct the Manager what to do.

A discussion on the planting of the trees ensued and it was requested Mr. Keys state the general locations.

NE 11th Court between 111 Street and 114 Street for as long as it last; East of 11<sup>th</sup> Place between the rail track and 11<sup>th</sup> Place, 90<sup>th</sup> Street and 124 Street.

Commissioner Mallette noted the sooner we get the trees planted, the sooner they beautify the community. Perhaps a precise list can be given to the Manager and if the Manager agrees we can move forward.

Mayor Hornbuckle stated part of the past discussion has been to plant oak trees. The Village has trees that should be planted rather than left to die. Should a citizen have a particular concern about a street they can convey to the Manager and she can work with the Committee to finalize the locations.

Commissioner Mallette noted it is her understanding that we are letting the Manager go ahead and accept those recommendations and plant the trees at her discretion.

Vice-Mayor Anderson said correct. He is concerned about those trees once they start construction over at public works it is going to be a little more difficult to pull these trees out and they are in a shady environment now which is not conducive for the trees.

Commissioner Bernard asked if there was consideration on the impact the oaks are going to have on the power lines, about how far they are going to be and whether they will be replacing trees. This is a plan you provide that we can say yes or no.

Mr. Keys noted it is very cumbersome to do it the way we have been. The vote was 4 to 1 by the Parks & Parkways Advisory Board.

Ms. Garcia noted she went to check out the trees and they are being well maintained. They need to be planted in locations where they have room to grow to 25 to 30 ft. and we are looking for your direction to proceed.

Commissioner Morris noted the Manager has much experience with this and he feels comfortable that Manager Garcia take over assigning the areas as our Manager.

Mayor Hornbuckle called for a voice vote, the motion carried 4/1, with Commissioner Bernard voting nay.

## **2. Recreation Advisory Board – Roxanna Ross, Chairman**

Ms. Ross noted she reviewed the contract signed with Lane Fitness Connection and although the contract only speaks about summer camp there was discussion with them about winter break and spring break camp. She expects them to present a proposal to the Village before the next commission meeting.

Recreation Advisory Committee recommendations:

1. Website and recreation center operating - we recommend that a link be posted on the village website to Lane Fitness Connection and to any other regular contracting service vendor and they would also have a link to the village website to possibly encourage people to move here.

2. Halloween - we ask that no official meeting be scheduled to take place in this meeting room between October 23rd and November 2nd to allow setting up and breaking down of the Halloween process. We also request Closing down NE 9<sup>th</sup> Avenue and 9th Court between 113<sup>th</sup> and 115<sup>th</sup> Street to make it a safe environment for the children between the hours of 6:30 p.m. and 8:00 p.m. We are asking for volunteers for this event.

3. We have a vendor contract approved by the Attorney. It was brought to our attention by former Village Manager Mr. Spence that contracts should have a finite term of no longer than a year. We have a contract with the Aikido Club which is over five years old and has to be brought up to term.

Fourth recommendation is the Recreation Advisory Board support for the development of a pedestrian greenway connecting the recreation center with other park lands throughout the village.

Flea market Update – \$647 from donations and concession vendors who have paid for a spot has been received. Three volunteer high school students were on hand to help with this event.

Coordination of meetings in this location – suggested in addition to further coordinate with the numerous events scheduled at the rec center have all events posted on a master calendar for reference.

The Recreation Advisory Board received an invitation from Miami Dade County offering to put on ethic seminars. Board consensus was to request this seminar for all commissioners and community members to review sunshine laws and other ethics.

**Motion** was made by Vice-Mayor Anderson to proceed with suggestions 1 through 3 to have the Manager pursue those actions.

Mayor Hornbuckle noted we should ask the Manager or the Attorney, especially about item 3.

Attorney Hearn recommends a one year term regarding the contract in item 3 and to post links on website. He would like to have some language that represents the Village is not endorsing those vendors.

The prior motion was seconded by Commissioner Mallette. The motion carried by voice vote, 5/0.

Ms. Ross noted it was brought to our attention that in the pavilion that goes with the 800 Park Lane an allocation for art in public places needs to be made. The Board will work with the Manager on a solution

It was noted there are many artists in the community and either an RFP or a request in the newsletter be made. A discussion on funding ensued.

### **3. Pathways Ad Hoc Committee – Gary Kuhl, Chairman**

Mr. Kuhl noted there is general consent approaching the pathways as proposed in the grant application. The idea was to widen the road to provide a shoulder. The vote was not in favor of widening the road. Until further information is received regarding approval of the grant funds, this matter will be put on hold.

A discussion on the pathway and grant application ensued. Ms. Garcia will follow up on this item.

Gary Kuhl noted previously, in the public participation portion and in emails that the Pathways Ad Hoc Committee voted 6 to 4 against the proposal that was submitted to Miami Date Transit with an amendment to request from them what changes can be made, but Chairman Kuhl stated “We haven’t nixed anything”.

Commissioner Bernard said he was at the meeting and that is not what he heard and until the minutes are posted he will give the benefit of the doubt. At this point he would like to

say the committee has been in effect for a couple of months and there are no minutes on the website and they have not been distributed to the commissioners. Minutes that have been approved need to be on the website and part of the public record.

A discussion ensued regarding Mr. Cooper representing the Village. It is the understanding that the official spokesperson for the Village is the Manager.

Commissioner Mallette suggested the Manager meet with the county to review what has been submitted, review the documents, have a clear understanding and then come back to the commission to advise on the parameters and what changes can be made.

**Motion** was made by Vice-Mayor Anderson to make the Manager spokesperson for this project dealing with the county, seconded by Commissioner Mallette with the stipulation that the project does not move forward until the Manager comes back with a report on exactly what is submitted and what the parameters are.

Vice-Mayor Anderson amended his motion to include the stipulation made by Commissioner Mallette.

Mayor Hornbuckle said a motion is not necessary. Direction is clear; we want a report from the Manager before we move forward.

Commissioner Bernard noted that if we are not going to meet until November than we are not going to make a decision in a timely manner and it may be too late to proceed with the project. Comprehensive traffic study update was received and a recommendation made. He noted the point of the Ad Hoc Committee was to get public input and Commissioner Mallette disagreed.

A discussion on the purpose of the Ad Hoc Committee ensued and concern was voiced on the issue of different information being received by commissioners.

There was general consensus that the project will be turned over to the Manager. If direction is needed by the commission prior to the scheduled November meeting a special meeting will be called.

#### **B. Village Attorney Comments**

Attorney Hearn updated the commission on the vehicle used to facilitate a robbery. With the help of the Police Department the jeep is in the Village's possession and the department is working with the State to get the title changed over to the Village.

This past month the command staff of the Police Department along with Attorney Hearn met with the PBA and explained that their participation is welcome but officers who are not doing their job will not be tolerated.

The Clerk and the Attorney will review and revise Village email policies. Some policies have been provided but not formalized or finalized and it is important to do that with email. He suggested the policies be formalized and then we bring in the Ethics Commission for a presentation. It would be appropriate to do this after the elections.

He thanked Commissioner Morris and wished him luck.

### **C. Village Manager Comments**

Ms. Garcia noted the hope is that there will be a ribbon cutting ceremony next month for the Village entry sign. There is a new City Clerk and she hopes that we can come up with a proposal to forward to the commission. She met with Bernard and one of our projects will be to enhance the medians. She met with the Chief and we want to implement community policing. Staff has expressed the willingness to take the Village to the next level and organization is the key.

#### **1. Report from Police Chief Glansberg**

Chief Glansberg welcomed Ms. Garcia and the level of excitement she has brought to the job. Reflecting on his award he thanked the commission for their help during the past four years.

He reported there were seven crimes during the month of September. Police Officers handled 151 calls for service, a total of 12 arrests, 4 felonies, 8 traffic arrests and officers donated 134 hours. There were no burglaries in September. There were 256 citations issued and traffic crashes are down from last year by almost 50%. The parking issues throughout the Village are being addressed. The Police Department is going to close 9<sup>th</sup> Avenue on Halloween so there will be limited parking.

There will be AD training on October 17<sup>th</sup> at 9:00 a.m.

#### **2. Updates on Various Projects**

##### **D. 1. Commissioner Bernard**

Commissioner Bernard said the commission will miss "Doc". He thanked all the residents and people on committees. He thanked Ms. Ross for her work with the flea market and selling her personal possessions for the benefit of the village recreation center.

##### **2. Commissioner Mallette**

Commissioner Mallette votes no on Commissioner Morris leaving.

##### **3. Commissioner Morris**

Commissioner Morris noted he would like to see the sign completed and for the dirt to be dug out for the public works building.

##### **4. Vice-Mayor Anderson**

Vice-Mayor Anderson commended Ms. Garcia for getting her hands on things in the short time she has been here. He thanked Issa for the hand sanitizers. He commended the Chief for learning accounting and knows he will pass his certification. The flea market was a success and it would be beneficial to continue this as an ongoing event. He agrees with Commissioner Mallette and votes no on Commissioner Morris leaving.

#### **5. Mayor Hornbuckle**

Mayor Hornbuckle noted the school the Chief went to is the premier certification a Police Officer can get and he continues to upgrade his education which benefits us and the City and wished him luck on his test.

He again welcomed Ms. Garcia and noted already people can tell by her enthusiasm, energy and pro-active approach that the commission made the right decision and she really will be a benefit for the Village, thank you.

He thanked "Doc" for his service and said it really was appreciated.

#### **14. ANNOUNCEMENTS – All public meetings are held at the Ed Burke Recreation Center 11400 NE 9<sup>th</sup> Court**

<b>Monday, October 12</b>	<b>All Departments closed in observance of Columbus Day</b>
<b>Tuesday, October 13</b>	<b>Code Review Committee 7 p.m.</b>
<b>Thursday, October 15</b>	<b>Qualification for Village Commission Candidates begins at noon</b>
<b>Monday, October 19</b>	<b>Planning &amp; Zoning Board 6:30 p.m.</b>
<b>Tuesday, October 20</b>	<b>Code Enforcement Board 7 p.m.</b>
<b>Tuesday, October 27</b>	<b>Code Review Committee 7 p.m.</b>
<b>Friday, October 30</b>	<b>Qualification for Village Commission Candidates ends at noon</b>

#### **Additional Meetings were noted:**

**Wednesday, October 21 – Parks & Parkways Advisory Board at 6:00 p.m.**

**Monday, November 2 – Recreation Advisory Board at 6:30 p.m.**

#### **15. ADJOURNMENT**

There being no further business, the meeting adjourned at 9:40 p.m.

Commission approved \_\_\_\_\_

Attest:

\_\_\_\_\_  
John Hornbuckle, Mayor

\_\_\_\_\_  
Village Clerk



# **Village of Biscayne Park**

## **MINUTES**

### **SPECIAL COMMISSION MEETING AND JOINT MEETING WITH PATHWAYS AD HOC COMMITTEE**

**Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Wednesday, October 28, 2009, 7:00 pm**

#### **1. CALL TO ORDER AND ROLL CALL**

Mayor Hornbuckle called the meeting to order at 7:05 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, Chester "Doc" Morris and Vice-Mayor Bob Anderson. Present from Staff were Ana Garcia, Village Manager, John Hearn, Village Attorney and Kim Prenter, Acting Village Clerk. Also present was Stuart Robinson of Kimley Horn and numerous residents.

Mayor Hornbuckle said he would like to move the Order of Business - Additions, Deferrals or Deletions up to item 2A. Public Comments and the Good and Welfare we do not need two separate items so after the committee speaks and Kimley Horn and then the Commissioners have an opportunity to speak before we vote we will have the public speak.

#### **2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited followed by a moment of silence in memory of Commissioner Bernard's stepfather.

#### **2A. ORDER OF BUSINESS –ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA**

Mayor Hornbuckle said we will start out as we have it on the agenda with a report from the Pathways Committee by Chairman, Garrett Kuhl and then Mr. Stuart Robinson from Kimley Horn, our traffic consultants, will give us an update and then we will continue from there.

#### **3. PRESENTATIONS**

##### **A. Report from Pathways Ad Hoc Committee – Garrett Kuhl**

Gary Kuhl gave a brief overview of what has transpired to date. Earlier this year an application was made for federal stimulus transfer funds proposing connecting the rec center to the village hall via walk and bikeway and the term *greenway* was also used. The concept involved some segments of roadways to vehicular traffic providing medians to provide access to homes on the closed streets. The administrative agency, Miami Dade County Transit questioned the justification of sidewalk bike way connectivity to the Miami Dade Transportation bus stops and a reply was provided. The commission appointed an Ad Hoc Committee to explore alternatives. The committee held several meetings to discuss concepts and the concept which received the most support involved

lighting the roadway, an area out of the swale and pond pathways. A number of concerns were raised with that concept and the majority of the committee did not support the idea. An alternative was discussed concerning traffic augment in lieu of a pathway. We were subsequently informed that funds could only be used for pathways. At our last meeting two weeks ago Commissioner Bernard proposed a new concept.

The idea which is illustrated in the package distributed would be to keep the existing pavement as it is, reduce the drive lane by adding stripes leaving a non paved area by the side of the road which would be a walkway. On 114<sup>th</sup> Street there would be a slight widening required. The committee took no action on that proposal but did agree to notify the residents of the proposed pathway, so there is no vote of the committee. Mr. Romano the vice chair of the committee solicited some comments in his neighborhood.

Victor Romano said he surveyed his neighbors on 114<sup>th</sup> Street who would be most impacted by this project. He went around with a letter and asked them what they felt about the idea; whether they were for it, opposed, or uncertain. Overwhelmingly the response was that they were opposed to it. There was one person who was definitively in support of it, two who were uncertain and did not want to make a decision either way; about 20 signatures of people who were opposed to it. So overwhelmingly people on 114<sup>th</sup> Street are opposed to it.

Mayor Hornbuckle said at this time he would like to ask Mr. Stuart Robinson to present his concepts on this idea.

#### **B. Kimley Horn –Sidewalk Widening Project**

#### **C. ARRA Grant Interlocal Agreement with Miami-Dade County**

Stuart Robinson thanked the commission for having him there and stated that Kimley Horn as the transportation consultant to the village has been asked to review a concept and in working with village staff it is our understanding that the village would like to explore the possibility of creating eight shoulders on certain streets within the village. Primarily this consists of re-striping 12 ft. roadways as 9 ft. travel lanes and 3 ft. paved shoulders. We reviewed the information provided by the village, the boards that are presented on either side of the room are the information that we have reviewed and I understand that also is material that was provided to the commission and the ad hoc committee as well. Basically re-striping a 12 ft. travel lane to provide a 9 ft. travel lane plus a 3 ft. paved shoulder would in itself represent a safety village enhancement when compared to the existing condition. Now we have pedestrians, bicyclists and motorists all using the same space on the roadway and transportation agents have found that the provision of facilities is safer than not providing facilities at all when it comes to trying to accommodate bicyclists and pedestrians. In general the striped shoulder would create a divisional illusion of a narrower travel space which should help to contribute to lower travel of these by automobiles; basically a form of traffic halting. Lower travel speeds are also considered an enhancement. The lower the speed at the point of collision the greater the chance the pedestrian will have to survive a crash. DOT has found that the provision of bicycle facilities based on that to be the safest place for bicyclists to be. In fact, it is now part of the state statutes that FDOT will add bicycle facilities to all state roadways. Also the proposed 9 ft. travel lane is a minimum width to meet standards for a local street. The lane can go down to as narrow as 9 ft. and still meet standards that are laid out by the American Association of Safe Highway and Transportation Officials also known as



ASTO. Eight shoulders are consistent with the concept recommended in the comprehensive traffic study update as a form of both traffic calming as well as a provision of a facility for pedestrians. That particular plan recommended the roadways that have medians such as 113<sup>th</sup> Street and 8<sup>th</sup> Avenue be considered for this type of treatment because the traveling themselves on those roadways were wider basically 12 ft. already and would not require additional asphalt be provided. The paved shoulder could be made to be consistent with the DOT striping standards with just a few minor modifications that he would recommend to the plan that has been developed. He would recommend that the striping be made consistent with FDOT design index 17346 and 17347. Also Miami Dade County Traffic engineering division which is a division of the county public works department because the county does maintain authority over all traffic control devices and this would be considered a traffic control project.

Mayor Hornbuckle thanked Mr. Robinson for the update and said he thought one of the biggest things in people's minds is that this mostly consists of stripping and is basically a traffic calming measure that is serving and creating the illusion of narrowing the road. He thinks a lot of people are wondering would it give people a false sense of security that now they have this pathway next to the road to walk on so they will not be paying as much attention, maybe the drivers are not paying as much attention or is that just a separate take on it. You did say it is a safer situation not only considered by most traffic professionals but that is one of the things and concerns we have heard at other meetings that people might have a false sense of security.

Mr. Robinson noted that pedestrians and bicyclists in the roadway would still have to exercise the standard of care that they would have to exercise otherwise whether the facility is provided or not and when FDOT was studying whether or not to have bicycle lanes they included as part of their design plan that they had to ask themselves similar questions; would providing a bicycle lane in and of itself be false security or would it encourage bicyclists to not exercise the standard of care they otherwise would have and in their studies they ended up finding the bicycle lanes were the safest way to provide the bicycle transportation. He would draw an analogy from that conclusion to this one that the provision of a facility is the safer condition than not providing the facility at all. Of course it does not rule out the chance that there will still be crashes but perhaps it could prevent crashes that otherwise would have occurred when all the users of the roadway were using the same space.

Mayor Hornbuckle said the other issue was more of a legal issue and perhaps we could ask our attorney by us providing these lanes does it open up us to additional lawsuits and additional chances for us being sued.

Mr. Robinson noted he would defer to the village attorney for a legal perspective but he thinks if you design the road consistent with DOT standards then as a village you are meeting your obligation to provide safe sufficient facilities that meet standards.

Attorney Hearn said from a liability point of view there is Chapter 750 of the Florida Statutes that municipalities are given sovereign immunity and he does not see this as being an issue of liability for the village. Of course you can always have lawsuits but he thinks either way the way it is now it is not a liability issue as long as you give the

standards where the caution is on the drivers and the people are using standard care. The actual facility would not impact the liability so from a liability point of view it is not an issue. Where you get liability on your streets is usually if there is flooding occurring and on the south side that are covered up by branches and you usually do not get lawsuits and if you do they cannot be successful.

Mayor Hornbuckle said this is only the second meeting conducted with the new staff and he introduced the new Village Manager, Ms. Ana Garcia, noting she is a very dynamic and proactive person and also introduced the Acting Village Clerk, Ms. Kim Prenter. He then opened it up for questions.

Commissioner Morris asked if it would be better to put the pathway next to the median rather than next to the swale way area because a lot of people have plantings in that swale that are going to pose a problem. Also, is it better to use the word *alternate way* rather than *safe way* so it does not imply a person can be in the area and be perfectly safe.

Mr. Robinson responded he would add, being asphalt it may be required on the median side rather than the swale side to alleviate those concerns, however if your question was about where the 3 ft. by the swale on the asphalt but on the swale side rather than on the median side. It is most expected from a driver's expectancy point to find a slower moving vehicle on the south and as a driver we would most likely expect to find a pedestrian or a bicyclist on the right side of the vehicle. So he would propose the striping on the right side basically the south side. As to your other question he would use potentially a terminology of just a *shoulder* which would basically call it what it is rather than *safe pathway*. Pathway by itself implies safe and separated from the travel lane by a trail. He would be intended to call it a *safe shoulder*.

Vice-Mayor Anderson asked is the 3 ft. area going to be shared with pedestrians and bicyclists?

Mr. Robinson responded that is his understanding.

Vice-Mayor Anderson asked who has the right-of-way, the pedestrian or the bicycle rider?

Mr. Robinson responded a bicyclist would have to yield the right-of-way to a pedestrian.

Vice-Mayor Anderson asked if a vehicle was driving down the street they need to be aware that a bicycle rider that is in the walkway may swerve out in front of them to go around the pedestrian. Is that going to cause any type of liability for us or safety to anybody? Right now this does not happen.

Mr. Robinson responded that would not cause the village additional liability because by State Statute bicyclists are legal users of all roadways except limited access highways such as I-95. So a driver even today with the situation you have on the street would have to be cognizant that a bicyclist may need to take a lane in order to go around a slower moving person, like someone walking a dog. He said if that condition occurs in the future

there would also be a possibility that if that condition occurs today or if the roadways are not as they are.

Vice-Mayor Anderson asked right now the way people are walking is if they have to be walking their dog they usually are walking by the median and if they are not walking the dog obviously they forget and walk on either side of the street and a bicyclist is usually riding down the street. In other words, in the middle of the street and we feel you should always walk your dog in the swale area no longer in the median. Everybody is always going to be on one side of the street and there is concern somebody is going to step out of that theoretical safety zone hanging on the side of the street. He is concerned about that now and as those pavement areas get worn what happens. There are a lot of intersections with no stop bars and a lot of intersections that are completely worn away and if that happens; what effect to us.

Mr. Robinson responded the proposed concept would not preclude people from walking their dogs in the median if they still chose to do that. As far as the striping goes, it will have to become part of an overall maintenance program for the Village for things like re-striping, stop bars and replacing broken stop signs. This striping if it were to become worn would become a part of that as well. What would be more likely to become worn would be the crosswalks at the intersections sooner than the striping of the paved road.

Vice Mayor Anderson said we would need to make sure we have all foliage cleared out including for the width of the mirrors 6 to 7.5 ft. and we have a 9 ft. walkway. There will not be a liability or pedestrian problems as long as they stay within the line. **Inaudible - noise**

Mayor Hornbuckle said we do not want to make this into a full blown workshop. Mr. Robinson answered the question it is a safer condition and if people are not stopping or going over traffic marks then we have the police department. This is a discussion on concept and not to pick apart every point.

Vice Mayor Anderson said he was concerned we do not go down the route that is unsafe for our citizens. So your answer is by having this painted line it is definitely safer.

Mr. Robinson responded the provision of the facilities has been found to be safer than not providing facilities for bicycle paths. But I do observe as a transportation engineer, the concerns you are making are real and that a motorist may pull up behind a stop bar and enter the crossbar. The same condition does not always apply for the same shoulder because vehicles momentum carries them forward across the stop bar to the cross bar.

Commissioner Mallette asked if our engineer tells us it is safer to have these lines and we pay for them on this portion of the roadway, will we have a future obligation to paint them throughout the rest of the city. Since we designated that this is a safer area are we thereby saying that the rest of our city that does not have them is not a safe area. Have we committed ourselves in any way or opened ourselves up to any potential liability if we do not in the future provide this?

Attorney Hearn responded there is no duty to make the road safer because arguably you could always make the road safer and so the courts do not put that on municipalities. You

as a legislature body determine there is going to be risk no matter how safe you try to make a roadway, how wide or how steep you make the roadway there is always risk.

Commissioner Bernard asked as a village do we have an obligation to maintain our roads, stripes, stop signs and cross walks whether we do this project or not?

Mr. Robinson responded yes, you have a basic level of public works type of ongoing maintenance.

Commissioner Bernard asked well if you think we have to paint these stripes again in five years don't we have to do that now for the stop lines we have paint around the curbs or making sure our median landscaping does not come into our roadways. Just because this village failed to repaint the stop colors for at least two years because we knew it was a problem didn't we still have the obligation to do it?

Attorney Hearn responded when you put a facility in you have the obligation to maintain it. Yes whatever you decide to do when you go from the planning stage to the operational stage that is where the sovereign immunity is no longer there.

Commissioner Bernard asked just as we have an obligation to maintain our streets, don't people whether they are driving, riding their bikes or pushing a stroller have an obligation to follow the rules of the road?

Attorney Hearn responded yes.

Commissioner Bernard said if by designating a space for a car to be which happens to have traffic calming and slows down cars according to the report and which reduces fatalities according to the studies, is there a chance that if somebody decides to walk in the shoulder facing traffic and sees a car coming towards them and sees it is not staying within the lines are we keeping them from getting off the road in any way if they see there is danger of a truck that might be wider than 9 ft. Are we by putting these lines in saying to any pedestrian you are not allowed to go out of these lines one way or the other.

Mr. Robinson responded no, in my opinion and you are not modifying the swale in any way either so if they did have to get off of the road to allow a larger vehicle to pass in the present condition you are not inhibiting that.

Commissioner Bernard said if they can get off the road now, they can get off the road if there is a designated car. Commissioner Morris asked the question should we put the shoulder lane on the median side or the swale side. By putting it on the swale side and by directing the vast majority of our cars because we do have a law which says no thru trucks so for the most part except for some deliveries and our garbage and recycling trucks that work for the village is it not true that by putting that 3 ft. buffer from where the majority of the vehicles are to go from the swale area where someone may or may not park their car that we are further enhancing the safety of somebody walking after their car if they happen to park in a parallel position, open their door and run the risk of a car that has no designated area possibly hitting them with a car door.

Mr. Robinson responded in the sense that you would be providing them with space to format getting in their car then yes you could be seen as enhancing that type of activity.

Commissioner Bernard said and likewise if somebody does not have a parallel space but they have a driveway where they pull into a garage or a circular driveway when they come out or go in because of that extra 3 ft. buffer zone is it not safer for the car to be able to see, have that higher visibility because they have that extra 3 ft., if their car nudges out into it, most vehicles are in that 9 ft. designated lane so they are not immediately coming out possibly into the path of the car. He is thinking of a condition where there is both a parallel and perpendicular driveway where there may be a car in the parallel position and the car is backing out there would still be a 3 ft. buffer outside the swale area that the car could come and have some higher visibility and therefore enhance the safety for the car pulling up and into the traffic.

Mr. Robinson responded in a normal case you could say they would have higher visibility in that sort of condition.

Commissioner Bernard said when you look at the plan as described here could it be any clearer, could it have been described a little better to say that there are not swales that are being affected. In other words where these stripes go on the existing roadway but there is no existing parking or swale that is being affected, there is no landscape that is on the swale being affected that it is solely starting from the edge of the existing asphalt going out toward the median. He noticed from something that Mr. Romano said that we were adding asphalt on two sides of the roadway, greenway; but on one side of the roadway. So the swale area, the area that is outside of the property line of every homeowner. The property line is not being touched; the swale is not being touched. It is only on 114<sup>th</sup> Street the median that is being touched. He wants to make sure that it is understood we are not even touching the swale area of a resident's property but is truly the beginning of the asphalt side.

Mr. Robinson said the plan does indicate untouched for the swale and the way he understands it does apply to 113<sup>th</sup> Street and 8<sup>th</sup> Avenue. The way he reads the plan there is a small section of 114<sup>th</sup> Street that does require asphalt on both sides instead of only on the median side because of the narrow nature of the existing road. It is basically a 13 ft. road today which allows two way traffic and cars do have to watch that no one is entering one side of 14<sup>th</sup> Street where they enter.

Commissioner Bernard said and creating a one way street, it is not really a part of this project necessarily but as he was measuring roads he saw that and was concerned about it. Would you recommend that we take the course of action and take that existing non-conforming two-way street and make it a one-way street?

Mr. Robinson responded you are talking about just a small piece of 114th Street that next to the large median area over to a 8th Avenue and if you want to designate that as part of this paved shoulder network he would ask that you consider making that one-way. That is the only way you would be able to maintain a 9 ft. travel lane.

Commissioner Bernard asked can you talk about the cost?

Mr. Robinson responded he reviewed a cost table provided by village staff. He came up with a cost using estimates of pay items from the Florida Department Of Transportation (FDOT) and those are typically used on much larger jobs. However the only difference he would make is to the cost on the asphalt area. He found the FDOT cost to be higher for the asphalt than what was shown on the table. The village did pursue smaller contractors to try to get the costs down over what FDOT uses. If he was to prepare an engineer estimate on this project today it would probably be \$35,000 with a contingency of 15%. It also includes some items that were in addition to the shoulder project that he found on the estimate provided by the village such as improvements to the rec center and amenities along the corridor, bike racks etc which he brought forward into it.

Commissioner Mallette noted shed understands there is going to be some paving in medians that exists and asked if someone could show her exactly where medians are going to be paved.

Mr. Robinson responded the streets that would have median paving would be 8<sup>th</sup> Avenue between 114<sup>th</sup> Street and 113<sup>th</sup> Street.

Commissioner Mallette asked what portion of the median would be paved?

Mr. Robinson responded the first one foot on the inside of the median from the travel lane, the southbound and the northbound. It would be 114<sup>th</sup> Street not 8<sup>th</sup> Avenue.

Commissioner Mallette asked there will be no paving of the median on 8<sup>th</sup> Avenue?

Mr. Robinson responded hat is correct.

Commissioner Mallette asked would the median on 114<sup>th</sup> Street have paving?

Mr. Robinson responded the median would have paving from village hall all the way to where the wide median ends and the narrow section of 114<sup>th</sup> Street begins. It is probably about 800 ft. from village hall to the mini round-about area.

Vice-Mayor Anderson asked are you going to pave it on the median side?

Mr. Robinson responded yes.

Commissioner Morris asked are you taking into account surveying this area because we do not know what is under that area. It has been many years since that road has been built, have you taken that into account?

Mr. Robinson responded he surveyed and marked the utilities by the facility. The pavement design of 114<sup>th</sup> Street calls for a 6 inch asphalt base and a 1 1/2 asphalt surface.

Commissioner Morris said you are talking about \$39,000 and we do not have \$39,000 in this grant.

Mr. Robinson responded the estimate is \$39,000. The grant amount is \$32,000.

Vice-Mayor said we have to take out a couple of thousand dollars for your work so now we are talking about coming up with \$9,000 or \$10,000; correct?

Mr. Robinson responded the \$39,000 includes the contingency fee and the soft cost for the designing survey.

Vice-Mayor Anderson said we would have to take \$5,000 out of reserve.

Attorney Hearn said the amount of the grant is \$32,896.09 with a 5% fee of the award of \$1,644.80 for a total net to the village of \$31,251.29.

Commissioner Bernard said Mr. Robinson is using FDOT standards which are much larger. When he looked at the cost he got three bids for asphalt for this specific job from companies who do that type of work and those estimates had about \$3,500 remaining for contingent fees including design and service.

Vice Mayor Anderson asked can you point out where the bus stop is?

Mr. Robinson responded the bus stop is at village hall and is mounted to a parking sign on one of these diagonal parking spots on the north side.

Vice Mayor Anderson asked will this pathway actually go to the bottom line.

Mr. Robinson responded yes, the other one is at the rec center. The concept is it is tapped into the sidewalk network. There is nothing from a statute standpoint that prohibits bicyclist from using sidewalks.

Vice-Mayor Anderson said so his understanding is the bicyclist and pedestrians use the walkway and what we did to the rec center is divide the road and the pedestrians will be sharing the sidewalk.

Mr. Robinson said in his observation bicyclist themselves tend to use the roadways in the area around the rec center. It could be because they feel comfortable riding in the street because low traffic volume; it could be because there are so many pedestrians and walkers and joggers on the sidewalk that they find it inconvenient for themselves to use the sidewalk. He does not think that condition will necessarily change as part of this project.

Vice-Mayor Anderson said it is his understanding the whole project is to make things safer for the bicyclist and the pedestrians and he wants to make sure that we will be safe from bus stop to bus stop.

Mr. Robinson said the path itself connects the two bus stops. If you are talking about accessibility to the two bus stops for people who live along the route the network of paved shoulders would be how they access the bus stop or the area around the circumference of the park. He does not necessarily think it is going to make the bicyclist use the sidewalk because this condition around the park will not actually change. So if people are riding their bike in the street today they probably will continue to do that under the proposed conditions.

Vice-Mayor Anderson said he wanted to make sure the village is physically connected to those bus stops by the grant for the bicyclist and pedestrians.

Mr. Robinson said you are connecting the two because the sidewalk is your facility connecting the two. At places where people gather or access the bus he would recommend that be where you place the bicycle parking.

Mayor Hornbuckle said the grant is contingent upon an interlocal agreement with Miami Dade County. He is sensing in general people like the concept of additional pathways for pedestrians and bikes but they are just not certain that this particular plan does what they want to do in the manner in which they want it done. He asked when do we need to have something to the county to fit their time line?

Village Manager Garcia said she spoke to the county. The county deals with the procurement so we do not have room for negotiation. If the county tells us that it is going to cost "x" amount and it doesn't she wants to make sure from the budget component we get the support to have the additional funding to finish the project.

Mayor Hornbuckle said we would not move forward if the bids did not come in right. People have always asked for additional places to walk, it is part of our master vision plan to add spaces like that as well as part of the traffic study but this plan in its current form might not be popular with the residents. He feels the plan could perhaps be adjusted for people to really embrace it and questioned what the timeframe was to respond to the county.

Village Manager Garcia said they do not start the process until they receive the signed interlocal agreement from the Village. She questioned if this project could happen without making 114<sup>th</sup> Street a one-way?

Mr. Robinson said yes. It could happen if you provide a *share the road* bicycle sign and you can say this is a provision for multi mobile on this section of the street. This is one option to reduce the cost of providing asphalt on that narrow section on 114<sup>th</sup> Street. This option would need to go through the Traffic and Safety Division of the County of Public Works for approval.

Commissioner Mallette said if you are telling me that this project can be accomplished on the narrowest part of the roadway continuing to be a two-way with simply striping and a sign that says *shares the road*, why can't the whole project be accomplished with signs saying *share the road*?

Mr. Robinson said because of the narrow nature of that one small stretch of route.

Commissioner Mallette said that is the narrowest part of the route and it can still be two-way, we can put striping and signs that say *share the road* and you feel that that would accomplish something but then again on the wider street that does not make any sense.

Mayor Hornbuckle said you could do that but his recommendation was to make it a one-way.



Commissioner Mallette said if it simply can be accomplished on the most narrow part of the roadway with striping and still be two-way with a sign that says *share the road* she is not sure why safer conditions would make this everywhere with a sign.

Commissioner Bernard said there is also the issue of combining traffic on that road. Right now to say lets not do anything on 113<sup>th</sup> Street because we put up a sign it will be safer, will it still be safer, yes to calm the traffic on that one stretch because very few people use it. He does not particularly agree that *share the road* sign is safe as it can be but certainly turning into a one way is.

Mayor Hornbuckle said everyone should keep in mind this is one of those not in my backyard things. Everyone likes the idea as long as it does not go in front of their house. This project is going to be an additional amenity with an additional place for people to walk, push their strollers and ride their bike. It is not some big change over night. The chairman of the ad hoc committee said that they did not vote on this. He asked the commissioners if they would like to ask the ad hoc committee to give their vote on this particular plan or just hear the residents give their opinions on the plan.

Vice Mayor Anderson said the commissioners asked the 11 members of the ad hoc committee to advise us on a bicyclist/walkway for a grant and also to a master plan and he would like to hear since we are discussing this part of the plan which is to do with the money for the stimulus package their recommendation on this plan.

Mr. Bloomfield said he was sure that some of the members would like to make some comments so maybe we can get the consent of the sub committee by allowing them to speak or if not simply give us a vote.

Mayor Hornbuckle asked how would the committee feel, we have conflicting reports about different people taking surveys, different people doing petitions, can we hear some comments from the public first.

Dan Keys asked you said that 9 ft. and 3 ft. were the minimal requirements. You are recommending today that someone create a shoulder roadway system, that is a new situation, planning a new city he would recommend 10 ft. travel lanes 4 ft. wide because it gives you space that is beyond the minimum and is safer.

Mayor Hornbuckle each resident will have two minutes to make their comments or ask a question.

Tanya Myer, 175 NE 114<sup>th</sup> Street thanked the commissioners and said this project has been something that has been worked on for years and she understands they are looking for opportunities for grants and funding but has great concern that we are talking about safety and a path for pedestrians and bicyclists when in fact the grant is a transportation improvement grant. No one ever gets off of that stop at 114<sup>th</sup> Street. She questions our integrity for voting on creating under the pretense of something else. If we want to explore pathways that is a separate subject and perhaps a grant opportunity will become available in a few years. She does solidly oppose the plan and overwhelmingly a number of her neighbors agree with that.

Ray Figueroa, 114<sup>th</sup> Street said he has been a resident of this street for over 20 years and primarily opposes the plan because he does not foresee the cost as being realistic. He feels that even adding 1 ft. of paved area to 800 ft. of asphalt is an expensive undertaking. He is in the construction industry and guarantees this will cost more money than the grant allows. He does not see anyone using this bus stop and all this is unnecessary. He thinks signage to reduce traffic is needed. He feels the streets the way they are right now are safe and does not see a problem with 114<sup>th</sup> Street. He questioned why 113th Street was picked instead of 115<sup>th</sup> Street because 113th Street has faster moving traffic and he would put a stop sign to slow it.

Kris Hodges, 751 114<sup>th</sup> Street said the work of the ad hoc committee is appreciated. Regarding safety and the need for this, he does not see a lot of people walking that route and does not see a pedestrian problem. He is on the bottleneck part, the two way 114<sup>th</sup> without the median and he does not think it would work. It will never work as a two-way, the plan uses 61/2 ft. and many vehicles are larger than this.

Albert Fine, 715 NE 113<sup>th</sup> Street said he and his wife are walkers and there is heavy traffic in the morning on 113<sup>th</sup> Street. When he walks in the evening he uses a flashlight to try to slow the traffic. We should not put a band aide on something and is not sure what we are talking about is going to be safe. Perhaps a light or stop sign would work just as well. Something as a temporary measure should not be done; we should do something to really make the walkways safe.

Dr. Dee Berguron, 225 NE 114<sup>th</sup> Street said one of her concerns was that police officers have to go down 114<sup>th</sup> Street when they leave the police station to go out on a call and to have that narrowed to a point that they are moving fast and not being able to have anymore than 9 ft. of space, she thinks the city requires 12 ft. for a driveway so why would you have 9 ft. for a roadway that people have to travel on. She is totally opposed to this plan, partly because she lives on the street and it does not make sense to spend this kind of money. There is no set cost for it yet or funding and we have already been told it is going to cost more than the grant.

Wayne Whetzel 767 NE 114<sup>th</sup> Street said he has lived here for 37 years and is totally opposed to this plan. It is peaceful and quiet now and to come in to make it busier and more confusing with no signs is very upsetting to him. The money should be spent somewhere else.

Mr. Charles 325 NE 114<sup>th</sup> Street said he does not want 114<sup>th</sup> Street to be one way. He has never seen anyone get off the bus at the city hall. He suggested running the bus down 113<sup>th</sup> Street coming up 6<sup>th</sup> Avenue affecting only one house. It is a peaceful quiet neighborhood and he likes to walk the median. He feels no one will slow down because of a stripe on the road.

Michael Glen, 801 NE 113<sup>th</sup> Street said he would be affected on both sides of his property by this proposed plan. He is concerned about the safety of proposing a 9 ft. walkway. Why not use 115<sup>th</sup> Street which is a smaller road and smaller access. He feels the whole plan is not a good one. It was indicated Miami Dade will use larger vendors and their cost will be consistent with what the engineer indicated. In addition it was indicated we

will not have a choice over what the cost will be and if we commit to this will be able to stop the process if it came in at \$50,000 or \$60,000. There are still questions going forward regarding the master plan. His recommendation is for everyone to vote negative against this project.

Mayor Hornbuckle asked if there were any other public comments. There being none he closed the public comment section. He asked if Mr. Kuhl would like to have the committee vote.

Mr. Kuhl said he would like to have the committee voice their opinions but first he has a question for the engineer. By state law bicycles are required to go in the direction of traffic and by state law pedestrians are required to walk safely in the direction of traffic so if we had this lane we have a conflict of bicycles going one way and pedestrians going the other, is that not correct?

Mr. Robinson said bicyclist have to yield to pedestrians.

Commissioner Bernard said Kimley Horn said that this is not a designated bike lane. The bicyclists use the road; this is a shoulder lane for pedestrians.

Mayor Hornbuckle said anyone on the committee who would like to make a statement is welcome to do so, please keep it under two minutes.

Bryan Cooper, NE 115<sup>th</sup> Street said it really comes down to safety and it was stated by our engineer that we will have a safer environment if we do this. He has seven names of people who are for it. He noted Mr. Romano had 20 people who were against it on 114<sup>th</sup> Street. At one meeting it was reported it looked like a 50-50 split on 114<sup>th</sup> Street so you will find the community is fairly divided on this but he does not think this will make any more pedestrian traffic than we currently have. Statistics indicate 10 people per day use the North Miami shuttle. He spoke to Jeff Cohen, the engineer, who felt the city would approve this and it was an excellent idea and would lessen the village's liability. Mr. Cooper said if a child gets hit between these two points and we do not take these federal dollars another attorney will make payable even though there is sovereign immunity the village could be liable for \$250,000.

Victor Romano, 114<sup>th</sup> Street said if you are going to walk between village hall to the rec center this is not the shortest route. Pedestrians tend to take the shortest route. The shortest route would be to go up 114<sup>th</sup> Street turn left on 8<sup>th</sup> Avenue and then go down 115<sup>th</sup> Street. Pedestrians are not going to go out of their way because of a stripe in the road. We can spend all this time, energy and money and people are not going to use it because they are going to take the shortest route. There is also concern among the residents of 114<sup>th</sup> Street about the negative impact on the greenway. Those who live on the greenway pay a premium to live there and we want to make sure that is not negatively impacted and without question this will impact the greenway. Another concern is construction and we do not want to deal with the noise, or people walking their dogs or joggers running in front of our houses.

Barbara Kuhl said we are supposed to be linking the path to the 6<sup>th</sup> Avenue bus so the fact that it is stopping at village hall still needs an area. A traffic study was done not so long ago and it mentions pedestrians need a place to walk and a shoulder, they considered 113<sup>th</sup> Street, 115<sup>th</sup> Street, 8<sup>th</sup> and 10<sup>th</sup> avenue. They chose 10<sup>th</sup> avenue because on the other streets if they made the roads narrower and increased the swale area they would have to remove some trees. No one has spoken about the effects of moving the traffic over and having trees removed. We have lanes that are two different sizes, on 8<sup>th</sup> Avenue and 113 Street there is road striping on the median and the swale, on the north lane 11 ft. 4 inches, she measured four different locations and that is the lane width; the south lane is 12 ft. 3 inches so if we were to use 113<sup>th</sup> Street the 11 ft. 4 inches we would have to add asphalt.. She realizes a complete study was not done but in the report she thinks the lanes were mixed up. The Kimely Horn report listed 115<sup>th</sup> Street as having 11 ft. lanes so it probably figured 113<sup>th</sup> Street which said to have the 12 ft lane would not have to affect the asphalt. Neither the commissioners or the planners want to call this a bikeway or a walkway because neither one of those really fit the criteria. If you call it a bikeway or a walkway everybody worries about liability. Everywhere you have cars next to pedestrians I do not care what the engineer says I would not feel safe. This commission is negligent if they move forward with this and tell people this is a safe place to walk. Another thing brought up at one of our meetings is why do something when so many people are in opposition. Let's do a comprehensive plan and do a really good job where everybody is in agreement.

John Ise said he is in favor of everything and anything that goes towards enhancing the pedestrian fomentation of this community, that promotes pedestrian public safety and promotes traffic volume. Kimely Horn has stated that this proposal while it may be imperfect promotes a more pedestrian fomentation of this community, promotes a safer environment for pedestrians and has the effect of traffic calming. He thinks this is essential and a very important point. His concern is if we say no to this and wait for the next plan there will be opposition to that plan and as we take any proposal that makes us a more pedestrian oriented community that there will be opposition to it at every stage.

Chuck Ross, 1166 Griffin Boulevard said he echoes what Mr. Ise said and agrees you have to start somewhere and be sensitive to the people who might be impacted but to him this is something he would like to see done throughout the village if possible. He would like to see it in front of his house. There is safety, cost and liability and will the county allow us to do this. It is safer, the attorney said liability is not an issue and it will have to be approved by the county. Funding is an issue but if we are getting \$31,200 it is free money for a plan that will hopefully make the village safer and hopefully the beginning of extending it throughout the whole village and perhaps we can find the needed funds possible from the CITT funds.

Karen Cohen thanked Mr. Kuhl for his leadership on the committee. She feels the process was too flawed from the beginning. There has been no study of how this will affect the values of homes on the route. She understands the general study by Kimley Horn is that it is safer to have a pathway then a roadway but she does not think there is a study of the safety of this particular path including the fact that many people park on those swales and there are cars and trucks that back up. It is hard to see children and people walking there and she does not think we have that safety information. If you read the first proposal it was to attach the North Miami bus to the metro bus. She worries

about people going onto the swales. She thinks we can get further grants and does not think we can come together on this plan and let's move on to something we all can agree on.

Dan Keys, 1107 NE 118<sup>th</sup> Street said he has lived in the village 41 years and has walked the community as a 10 and 15 year old and has always felt it is his responsibility and duty to keep himself and the other people on the road safe. He believes that walking in this perceived safety zone will not be as safe as him seeing cars coming and getting out of the way. He does not believe this is a safe plan. We are creating the minimal acceptable facility that has some additional variables such as our trees that make it less safe. He does not want to see white lines down the avenues. He is against it because he does not believe it is safe.

Gary Kuhl, 777 NE 111<sup>th</sup> Street thanked the commissioners and Bryan Cooper for the time and effort they have put in. The original concept was a green light but we are far from that. The grant proposals specifically talked of providing a bikeway and a walkway and a connection to mass transit Miami Dade public transit and this does not accomplish that. As a practical matter it does not allow people to walk side by side. As a practical matter he does not think this works and we are just taking money and squandering it and possibly getting ourselves further in debt. He would like to pursue this and likes the idea of master planning and is in favor of pathways in appropriate areas and creating a safe isolated walkway for pedestrians.

Jane Ansley said she really loves this plan and thinks it is a minimally invasive way to improve the experience of pedestrians of Biscayne Park. The money is there, we have to use the parameters of the grant and that is what was designed but if we can get passed that and you think we are a community that needs to do something for their pedestrians this is a simple small place to start. However I accept Mr. Romano's data for the residents on 114<sup>th</sup> Street and if you have people on the route who do not want to do this I do not see how the commission can force them to do it. It is just not the way to proceed. Like Mayor Hornbuckle said it just does not seem like it is the thing to do at this time.

Mayor Hornbuckle asked if anyone else had comments. There being none he asked the committee to vote on whether or not they are recommending this plan as presented or if they are not recommending this plan.

Commissioner Bernard said an issue has not been mentioned. This flyer was sent to over 60 houses with a clear indication it was for public interest to hear from people who were on the route and a few beyond the route and how they felt. It was on the website. Of those 63 houses that were on the route 16 of them according to Victor Romano surveyed are opposed to it. There are people who sent emails that are on the route that have said that they do want it including someone on 114<sup>th</sup> Street who is an urban planner and trusts what it is and has a child he pushes in a stroller and several other families who also have little children. In addition to that there were 20 people throughout the village who were not on the route that we all saw the emails from that said not only do they think it is a good idea but they wish it would be in front of their house too. In addition there were people on the route that did agree with it but were not invited personally to come to a meeting because they thought their indication on their email was worth it. So when you

heard from 8 residents tonight and their opinions are very valid and their passion is clear but it is not just the people who are here that are speaking against it there are people we saw on an email that are on the route that said they do want it. So it is not a matter of forcing it on anyone. Of the 63 people that were given flyers according to Victor Romano and the emails we got 16 out of the 60 said that they did not want it. In the September 30<sup>th</sup> committee meeting there was a unanimous decision to come up with a survey and the purpose of the survey was to determine what the people on the route and the people not on the route thought about this project. The way a survey works with a committee and as it did with the recreation board and as their minutes say that it would be designed, it would be discussed, it would be vetted, it would be agreed upon and then it would be issued to the community at large. What Mr. Romano has done and he is no way near denying the accuracy of people who said yes or no, but it is not a part of this committee and it should not be seen as part of this committee because the survey that was suggested and unanimously approved was not whatever survey that was taken it was to be designed and vetted, we all saw the value of that in the recreation board and that did not happen here. He does not think we can consider this map as an official city document. Obviously we can look at the 16 houses that are on here and say those people on the route did not want it but he knows personally of several on the route that do want it that were not approached.

Mayor Hornbuckle said we are going to get into nit picking and trying to split hairs here. He thinks everyone here will be willing to accept that the survey is a survey that is an unofficial one that was done by a lay person who was not vetted but the results of the survey are fairly clear and he does not think they have been skewed in any way and let us take it for what it is.

Commissioner Mallette said we can all interpret the information we received from the public and from the committee.

Commissioner Bernard said the committee did not get the package and emails we got, is that correct? So if Ms. Ansley said she came here thinking she liked the plan but after seeing everybody on the route did not want it she is feeling a little differently, he is here to say they did not get this packet of emails with all the people who said they did want it, including people on the route and to think because this room is filled with people who do not want it and 8 people said please do not do this in front of my house this committee is not aware of emails we got from other people who are on the route who absolutely said they wanted it but were told that they did not have to come to the meeting because these emails would be heard. He thinks it is important dissention because if Ms. Ansley thinks there is no one on this route that wants it that is an incorrect assessment.

Mr. Romano said he never told anyone they did not have to come to this meeting and he does not believe the commission should be telling the committee to go ahead and say what they should or should not do. We have a chairman on the committee.

Commissioner Mallette said the emails were sent to the commission because ultimately the commission does make a vote on whatever the committee presents.

Mayor Hornbuckle said we are going to hear the recommendation of the committee we appointed and then we are going to vote. We have all talked enough.

Mr. Cooper said the interlocal agreement essentially is just asking us to commit to connecting points A and B. We do not have to stick with this plan, this was crafted at the last meeting but we can put it on 115<sup>th</sup> Street or all the way up 113<sup>th</sup> Street and cut it over. He thought this meeting was about approving the interlocal and that there still was time to discuss what plan could be created. So to do a thumbs up or thumbs down vote on just this particular plan, when he thought the issue was more about the interlocal agreement. We can still continue to be somewhat flexible.

**Motion** was made by Mr. Keys, seconded by Ms. Cohen to defeat this plan as presented. The motion carried by voice vote, 6/4.

Mayor Hornbuckle said the recommendation of the committee by a vote of 6 to 4 is to defeat the plan as presented and also not to move forward with the interlocal agreement. Since there is time he asked the commissioners if they wanted to vote on this plan, funding and project or do you want to vote and discuss whether or not we can try to have any other discussion in the time frame to November when we have to get to the county about another proposed plan.

Commissioner Bernard moved we vote on the contractor to be signed so we can stay in the process because once we sign that contract and according to what our manager said the deadline to complete the job is 2012 but if you sign this interlocal agreement then we can proceed with more engineering and a tweak plan so the people fully understand it or can accept whatever changes have to be done. This is a reimbursement grant so if we proceed and we pay our engineer to create a plan and then to get the bids and if those bids come in high and we do not get the funds, we put the plan on the shelf until we do find the money and we are not committed to anything on the grant. If on the other hand we bid it and it comes within the budget then we can proceed and we have until 2012, is that accurate?

Attorney Hearn said the way the grant is set up is the plans obligation is if you cannot complete the grant all plans you are obligated for you will be accountable for your costs.

Commissioner Bernard said which at this point is less than \$3,500 because he understands that includes construction administration and those funds can come from CITT road funds and he points out the 6<sup>th</sup> Avenue project which this commission approved was for \$75,000. THE DOT said by their estimates it is going to be \$36,000 more than that and this commission approves \$36,000 over what we were getting on that federal stimulus for that project. After the bids were done and after they came in much lower maybe as much as \$20,000 lower we are still committed to the funds but it is \$20,000 less which means because we are getting it from the CITT we have \$20,000 that the commission approved for a beautification project that we can put directly towards a safety project and if \$3,000 goes toward the engineering we are not out any money at all.

**Motion** was made by Commissioner Bernard to approve the interlocal agreement knowing it is a reimbursement type project.

Mayor Hornbuckle said ultimately if we approve that project and it does not come in at cost or if we decide for any reason we do not want to continue with it we do not have to.

Attorney Hearn said the earlier in the process the less the cost.

Mayor Hornbuckle asked for a second to the motion. Motion died for lack of a second.

**Motion** was made by Commissioner Morris Anderson to turn down the grant, seconded by Commissioner Mallette.

Mayor Hornbuckle said the motion is to go ahead and turn down this particular grant and basically end this project in this format.

Vice Mayor Anderson said and then the ad hoc committee can continue along as they have been charged with the master plan.

Mayor Hornbuckle said the commissioners had not really had a chance to comment so we will allow them time to make comments.

Commissioner Morris said this is a bad idea. We are accepting money that is for transportation and it is not being used for transportation. You are putting a walking path and he thinks that is wrong. \$8,000 over budget and he does not think it is safe and thinks it has to be 10 ft. and 4 ft.

Vice Mayor Anderson said we are rushing and we need to get the community involved and let the committee do their job to see if we have safe pathways within the village. Come forward with a good plan and the engineer study it. He is against using the CITT funds except for what they were for putting in drains. We have a grant and we are waiting until we get enough money again to do the next phase, we have a master plan and are doing it in phases. This is the way we should do anything that is going to be costing a lot of money.

Commissioner Mallette thanked the committee for their time and effort. She thinks the people bought their property with the expectation of being on the median as it is. She was hit by a car as a child and striping would not have helped her, she was not paying attention. She has to consider those who bought their property with a certain expectation and is opposed to the plan.

Commissioner Bernard said he is also representing the dozens of people out there that say we need to have safer streets and he understands everyone is here because they disagree with it but he has gotten more emails then are in this package from people saying we should do it. We came up with a concept and the federal people approved it. Several other cities came up with a concept and we answered these questions and the federal government said we are approved. It is not to link one station to another station; it is to shorten the distance of un-striped unsafe streets. As far as using 114<sup>th</sup> or 115<sup>th</sup> Streets it is exactly the same, the station is in the middle of the street and is the same whether you go north or south. We are doing a project on 6<sup>th</sup> Avenue spending \$36,000 for beautification, there is construction there, removal of trees, curves where there were no curves before and we had not one meeting, workshop or committee so to say lets get public input



because we want to see what the people say that we did not do. When a couple of years ago we were looking to hire another police officer and you had 5 petitions of 100 people it was disregarded. When a resident wrote a letter about the management selection process and how terrible it was and 30 residents signed it not only was there no action taken, there was no response. The only time we had people speak on the manager selection process was on September 1 when everyone said please do not do this, please re-advertise and they were completely disregarded.

Mayor Hornbuckle said please stay on the topic.

Commissioner Bernard said Commissioner Anderson said he wanted more public input, we had public input. We had three months of committee meetings that came up with not one plan. CITT funds, he truly does not understand why they were prepared to spend \$36,000 on beautification and not one penny on safety, not one. Our engineer has said that what we have now can be enhanced safety wise by painting stripes on the street and calming the traffic. If someone thinks that they do not want to walk on the 3 ft. walkway they are not forced to do so but the very act of barreling the roads is a proven try and true traffic calming procedure and if we did it on 113<sup>th</sup> Street and 8<sup>th</sup> Avenue because the roads are already 12 ft. wide and we can do it on 8<sup>th</sup> Avenue from Griffin all the way up to 121 Street the people he spoke to on those roads said they want a 3 ft. barrier between their house and a vehicle. They want a place where if they are walking and they see a car coming towards them that is not against the line they will get off. Two little kids were hit by a car two years ago. If you had two little kids that were hit by a car you would do everything you could to make the street safer and that is what this commission did. A group of residents got together and they said how can we make that street safer and we came up with short and long term goals and this commission voted to support that. You also agreed to long term goal commitment, a traffic study and you did it. The traffic study was done and no one looked at it or you could have seen that a shoulder was acceptable but more important you agreed to provide dedicated protected paths for pedestrians, bikers, strollers, dog walkers and children playing to the maximum extent that it can throughout the village to reach the most residents and homes. The long term solution being to separate cars and people from the same right of ways to the greatest extent possible and what is likely the best way to provide for long term safety of our residents and our children. This is what this committee did. We have not done for 2 ½ years because we do not have the money, we do not have the ability. We do not have the people that are ready to do it, well it is all right here. The county says we can do it, the engineer says we can do it, the lawyer says we can do it, the federal grant people say we can do it and we are throwing it away. He thinks that our first responsibility to our residents is safety and we have the ability to make it safer and he understands Doc, you do not think it is safer, but the engineer says it is.

Mayor Hornbuckle said he is dismayed at how intensive this has become. Sometimes in these different projects we have said we need to find creative ways to bring amenities to the village without spending a lot of money and by finding grants. Here some folks went ahead and did that and folks are against it. He thinks they are being a little shortsighted. If you remember we did several street closings mostly along 5<sup>th</sup> and 6<sup>th</sup> avenues as an experiment and as a temporary measure for about six months and then we went and saw how it worked. It turned out all of it worked great except for one which seemed to make

things worst and did not help the homeowners along there and everyone said that did not work lets take it out. That was the corner of Griffin and 6<sup>th</sup> Avenue. Nothing we do is set in stone and we are being emotional and not looking at a long sighted approach to this. The other thing is if you remember there is always opposition to every project we do. We talked about putting a sidewalk in around the rec center and the park. We had a very similar outcry and at least as many people were opposed to that as were for it and now you see it is probably one of the most used and loved amenities that we have in the park. So we could look at this as an experiment, try it and see how it works for our community. It is safer than it is now and it is a start of making our community more pedestrian friendly. We could do this as an experimental project and see how it works out and if it works use it and maybe expand it, if it did not take it out. That being said he is not in agreement with the way the motion was said especially because it was to kill the grant and he thinks if we do have a little time where we could move forward and try to come up with some other ideas, he is going to be opposing the vote to kill the grant. He thinks we should try to move forward and come up with some ideas and have a start to making our community more pedestrian friendly.

Commission Bernard said before we vote he would like to hear the manager's recommendation.

Mayor Hornbuckle said considering the short amount of time she has been here, the amount of time she has had to digest a lot of different things, he thinks you are really asking her for a personal opinion at this point because she is taking into consideration not much more than we have and the committee and the community has. That being said he asked Ms. Garcia to answer for herself if she would like to make any comments or what she thinks about the plan.

Ms. Garcia said since she is from the Department of Recreation she is all for safe pathways and walkways. As a matter of fact she just got her second quote on trying to finish the walking path around the community center because she sees a lot of people using it. She is also about not doing minimum standards but exceeding standards. She would hope that is what they want from her. There has been talk about making 114<sup>th</sup> street a one way . To rely on the county to make that a one way to make this work may not be the option. She is starting to hear the 08-09 budget is in the hole from what she has been told by the finance director. She realizes the Commission is going to have an expectation of her and other department directors to come in and deliver a budget next year that is acceptable even though she is starting in the hole. That concerns her we may be \$7,000 or 8,000 over. She took this job knowing that the Commission may not always like what she is going to say but she cannot compromise her integrity and what she thinks would be the safe thing to do. What she sees right now as safe, for the safest possible thing we are doing right now is a walkway that we have along the rec center. She is looking forward to completing this project and she would like to continue the envisioning process to be able to have safe walkways and perhaps do something with the medians. Additionally, possibly looking at a national plan that ties our parks and amenities and other grant opportunities like that.

Mayor Hornbuckle called for a roll-call vote. The motion carried 3/2 as follows:

AYES: Commissioner Morris, Vice-Mayor Anderson,  
Commissioner Mallette

Nays: Commissioner Bernard and Mayor Hornbuckle

**5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS**

**6. GOOD AND WELFARE (PUBLIC)**

**7. REPORTS**

**A. Village Attorney Comments**

**B. Village Manager Comments**

**8. ADJOURNMENT**

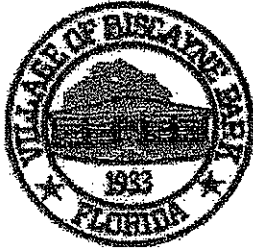
There being no further business, the meeting adjourned.

Commission approved \_\_\_\_\_

Attest:

\_\_\_\_\_  
John Hornbuckle, Mayor

\_\_\_\_\_  
Kim Prenter, Acting Village Clerk



# Village of Biscayne Park

## MINUTES

### REGULAR MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Tuesday, November 3, 2009, 7:00 pm

#### 1. CALL TO ORDER and ROLL CALL

Mayor Hornbuckle called the meeting to order at 7:00 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, Chester "Doc" Morris and Vice-Mayor Bob Anderson. Present from Staff were Ana Garcia, Village Manager; John Hearn, Village Attorney; Mitchell Glansberg, Police Chief; and Kim Prenter, Village Clerk.

#### 2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

#### 3. PRESENTATIONS

##### A. Proclamation to Honor Doc Chester Morris Day

Mayor Hornbuckle read the proclamation honoring Commissioner Morris and proclaiming Tuesday, November 3, 2009 Chester "Doc" Morris Day.

Commissioner Morris thanked the Village of Biscayne Park, the commissioners, employees, the police department, friends and family for the honor to serve the Village and be on the commission.

Mayor Hornbuckle presented Commissioner Morris with the official *Key to the City*. Commissioner Morris thanked everyone.

#### 4. ORDER OF BUSINESS – ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA

Vice-Mayor Anderson called on the commissioners to see what could be pulled from the agenda to keep the meeting short so Commissioner Morris can celebrate his anniversary.

Items 11A, 11C, and 11D were deferred to next month.

#### 5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS

Dan Keys said regarding Item 11E he would not like to see micro management and the commission should allow their competent administration to function.

Roxanna Ross said committee board members should be added to Item 9A to receive the proposed ethics training.

Rose De Mërle said goodbye to Commissioner Morris, wished all the commissioners good luck and noted it is time for a change.

Bryan Cooper said he is in support of Item 9A, expanding the ethics training effort and he would like to see an Ethics Review Board for issues having to do with the Village charter and bill of rights. Regarding Item 11E it is important to remove trees in violation of county law.

The public comment section was closed.

**6. CONSENT AGENDA (Motion to be made for all as one or remove for discussion)**

**A. Approval of Minutes - September 30, 2009 Special Meeting and October 6, 2009 Regular Meeting**

**Motion** was made by Commissioner Bernard, seconded by Commissioner Mallette to move the minutes on the consent agenda to the December meeting. The motion carried by voice vote, 5/0.

**7. PUBLIC HEARINGS**

There being none, the next item followed.

**8. ORDINANCES – SECOND READING**

**A. ORDINANCE 2009-7**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AND RENEWING PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, A FRANCHISE FOR THE PURPOSE OF SUPPLYING NATURAL, MANUFACTURED, AND OTHER GAS TO THE VILLAGE, PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE (1<sup>st</sup> Reading)**

Attorney Hearn requested this item be deferred to the December meeting.

It was requested the December 1 meeting be moved to December 8 due to the election.

**Motion** was made by Commissioner Morris, seconded by Commissioner Bernard to move the December meeting from December 1 to December 8.

Vice-Mayor Anderson said he wanted to make sure they would still be able to have a recording done by Comcast .

Mayor Hornbuckle said he was sure Ms. Garcia could arrange that and called for a voice vote on the motion, which carried 5/0.

**Motion** was made by Commissioner Mallette, seconded by Commissioner Morris to defer Ordinance 2009-7 to the December 8<sup>th</sup> meeting. The motion carried by voice vote 5/0.

## 9. RESOLUTIONS

### A. Consideration of Resolution 2009-18 requiring all commissioners and city staff at the department level participate in Village of Biscayne Park sponsored ethics training

Commissioner Morris said he has no objection to adding the boards to this resolution. He said when he became a commissioner he went to Hialeah for two or three hours and listened to speakers and also took a course with the League of Cities which was beneficial.

Vice-Mayor Anderson said instead of saying *boards* can we say *anything that falls under the sunshine laws*.

Attorney Hearn said it will be a public workshop that anyone can attend and he can change the language to say all advisory boards or any meeting that falls under the sunshine law.

Commissioner Bernard questioned the wording *requirement for all commissioners* and asked what happens if they do not attend. Can we require it for the city staff and encourage it for the board members?

Attorney Hearn said he thought that would be the best way to word it.

Mayor Hornbuckle said we will leave it as *required* and he called for a voice vote on the motion, which carried 5/0.

### B. Consideration of Resolution 2009-16 authorizing the appropriate village officials to apply for the federal drug control and system improvement program grant

Chief Glansberg said this is a federal drug control and improvement program grant for funds in the amount of \$2,922 to improve communication in the field for police officers for the records department. The funds will be used to purchase a laptop and software.

**Motion** was made by Commissioner Morris, seconded by Commissioner Mallette to accept resolution 2009-16. On voice vote motion carried 5/0.

## 10. OLD BUSINESS - None

## 11. NEW BUSINESS

### A. Consideration of Maintenance Memorandum Agreement with Florida Department of Transportation

This item was deferred to the December meeting.

### B. Consideration of a request of the Commission that "VOTE THIS TUESDAY" signs be allowed on Village property (medians & swales) in the last week before the Commission Election

Mayor Hornbuckle said we spoke about this before and always decided it was okay because it was for public purpose. Do we have consensus for it.

Vice-Mayor Anderson said he appreciated Commissioner Bernard's efforts to encourage people to get involved and vote but feels the signs cause pollution and could be a tripping hazard. He feels this is not necessary at this time.

Commissioner Bernard said the signs are not going to be placed where they will be a tripping hazard and it is tradition to try to get people out to vote.

**Motion** was made by Commissioner Bernard, seconded by Commissioner Morris to allow *Vote This Tuesday* signs be placed in safe areas on Village property. The motion carried 4/1 with Vice Mayor Anderson voting no.

Mayor Hornbuckle said Election Day is Tuesday, December 1 from 7:00 a.m. to 7:00 p.m. in the rec center. He is sure everyone will be well aware of it but it never hurts to keep people abreast of the situation.

Commissioner Mallette said we need to be cautious in the future about signs on public property to comply with the sign ordinance.

**C. Discussion of the Ecology Board and its purpose**

This item was deferred to the December meeting.

**D. Discussion of Committee Agendas and Minutes, including when and how they should be made public**

This item was deferred to the December meeting.

**E. Discussion of the tree removal permit, how it has changed since it was originally approved by the Commission and how it must come before the Commission again prior to it's submittal**

Commissioner Bernard said about a year ago there was discussion about adding new trees to the medians and part of that plan was tree removal. We have to abide by the county rules for tree removal and that permit was supposed to be submitted a year ago but was not. It has changed since the original submittal and he wants to make sure before it is submitted it gets brought before the commission to follow tree removal properly. He wants to make sure the manager understands not to make that submittal before the commission has an opportunity to review any changes.

Attorney Hearn said the plan was approved but never acted upon and removal items have changed.

Vice-Mayor Anderson said the village manager should make the decision and micro managing is not needed.

Mayor Hornbuckle said he feels Ms. Garcia will handle it correctly and will make sure it is done according to the law.

Commissioner Bernard said that plan for new trees and tree removal was brought before the commission over a year ago and approved, it was never acted upon by the manager. Since then the removal has changed and before it goes to the county for that removal permit the procedure to come back to the commission, show residents as a public document what trees are being removed is the process. The reason we have advisory boards, they report to us and we review and approve it. This is the system in place and he is asking it be continued.

**Motion** was made by Commissioner Bernard, seconded by Commissioner Morris that before the permit for tree removal is submitted it comes before the commission for approval. On voice vote motion failed 4/1.

Commissioner Bernard said then we are going to submit it without the commission understanding what is being done.

Mayor Hornbuckle said Ms. Garcia is going to implement the plan the way it stands so it does not have to come back again to the commission.

Commissioner Bernard said no commissioner has seen the plan which has been changed since the first submittal and has not been approved by the commission. There are trees slated to be removed that we are not aware of. There is a serious problem of trees being removed without permits. The revised plan should be brought before the commission for approval before it is submitted.

Mayor Hornbuckle said we have a plan and a person in place who is going to implement that plan and we do not need to revisit it again.

Commissioner Bernard said the plan has changed if you read the Path & Parkway committee minutes you will see some trees have been added to be removed. He is not comfortable not knowing what additional trees are going to be removed.

Vice Mayor Anderson suggested the commissioners check with the village manager for an update on the trees that are going to be removed.

Ms. Garcia said she will review the original plan that was approved by the commission and see where the new plan deviates from that.

Mayor Hornbuckle said please revisit this and have a report for next month and right now we will move forward with what is in place.

## **12. GOOD AND WELFARE (PUBLIC)**

Gary Kuhl, 777 NE 111 Street said in the past when we had elections we held a benefit night. This was previously sponsored by the civic club but they are no longer active and he suggests the Village Manager initiate this.

Chuck Ross thanked Commissioner Morris for his dedication and said he will be missed.



Ms. Rose De Merle said it took five years for the sign and hopes it does not take another five years for additional signs.

Mr. Keys suggested that regarding the tree removal an informal survey of local cities be taken to see whether or not other commissions find it necessary to approve the tree removal applications to the county. He congratulated Commissioner Morris.

Roxanna Ross thanked Mr. Morris for his service and efforts and the public works project.

Mr. Bryan Cooper thanked Commissioner Morris for his service and said that the Parks & Pathway Committee is an advisory board to the commission and he cannot understand how they would give up their responsibility to make the review and give up what is in the charter. He appreciates Roxanna Ross and what she did to initiate a survey for the rec center and that is the kind of outreach he wants to make to the public in his campaign. He invites everyone to visit his website, [www.bryancooper.org](http://www.bryancooper.org) and complete a survey to help him craft his platform.

Barbara Kuhl said when we did the original plan and had trees identified some of the trees were dead and public works removed them which they were entitled to do without a permit. She is not aware of any good trees being removed without a permit.

### **13. REPORTS**

#### **A. Committee Reports**

There being no reports, the next item followed.

#### **B. Village Attorney Comments**

Attorney Hearn suggested the village not get involved in meet and greets and instead they should be hosted by outside entities.

#### **1. Consideration to move December meeting from December 1 to December 8 or thereafter as determined, due to conflict with election date**

This item was previously discussed.

#### **C. Village Manager Comments**

Ms. Garcia said it has been an honor and a pleasure to work with Commissioner Morris in the short time she has been with the village. She reviewed the items listed on her report a copy of which was distributed to the commission.

She requested a date for the ribbon cutting ceremony for the entry sign and recreation pavilion. It was decided the ribbon cutting ceremony will take place Saturday, November 21, 2009 at 11:00 a.m. on site at the entry sign and then at noon in the pavilion for the ribbon cutting at the Ed Burke rec center.

She requested a portion of the December 8<sup>th</sup> meeting be dedicated to financial discussions with outgoing Director Hugdahl to get a clear understanding of the 2009-2010 budget, completion of the audit and amendments to the budget.

Ms. Garcia acknowledged and commended the village staff for their coming together as a team regarding the recent events.

#### **D. Comments**

##### **1. Commissioner Bernard**

Commissioner Bernard wished the seven candidates running in the election good luck. He thanked Doc Morris for always being the voice of reason. He said that he previously spoke with the attorney about candidates writing something for the newsletter and asked for Attorney Hearn's thoughts on this.

Attorney Hearn said there is the issue of article size, how you edit what they say and treating people unfairly. He understands the purpose is getting information out but a lot of times that information is seen as an attack on others and if you try to edit that you are now being seen as getting involved in the personal rights of candidates which is an issue that should be avoided.

Commissioner Bernard suggested holding off on the deadline for submittal until after the election so the new commission can be announced. Keeping it from being political and use it as a means of notification.

Mayor Hornbuckle said there are a lot of events coming up quickly including Winterfest and he thinks we have to trust the folks that are incumbent to use their judgement and use this opportunity in a fair manner to just write about information that is happening in the village as we always do.

##### **2. Commissioner Mallette**

Commissioner Mallette thanked Commissioner Morris and is sorry to see him leave. She hopes the village will be able to have a ribbon cutting on NE 6<sup>th</sup> Avenue in a short period of time. She takes special pride in this project.

##### **3. Commissioner Morris**

Commissioner Morris requested the commission let the manager manage. He thinks she is doing an excellent job. He said it is a privilege to vote and requested everyone do so. He would like to see everything moved out of village hall and into a new administrative building and feels this can be accomplished by applying for grants.

##### **4. Vice-Mayor Anderson**

Vice-Mayor Anderson said it has been a real privilege serving with Commissioner Morris. He said we should take you up on the challenge on the historic site of the cabin and a new administrative building and then we could use the log cabin for recreation. He appreciates holding tight on the budget. He thanked the Village Manager for all of her efforts.

##### **5. Mayor Hornbuckle**

Mayor Hornbuckle thanked Commissioner Morris for his service and for many times being the *voice of reason*; it is greatly appreciated. The ground breaking ceremony for the new public works building was held and he thanked Vice-Mayor Anderson and

former Mayor Richard Eader noting the whole idea and project started with these two gentlemen. He thanked the Village Manager for her enthusiasm.

**14. ANNOUNCEMENTS – All public meetings are held at the Ed Burke Recreation Center 11400 NE 9<sup>th</sup> Court**

<b>Wednesday, November 4</b>	<b>Special Mtg. of Parks &amp; Parkways Board, 5:30 p.m.</b>
<b>Tuesday, November 10</b>	<b>Code Review Committee, 7:00 p.m.</b>
<b>Monday, November 9 &amp; 23</b>	<b>Planning &amp; Zoning Board, 6:30 p.m.</b>
<b>Tuesday, November 17</b>	<b>Code Enforcement Board, 7:00 p.m.</b>
<b>Wednesday, November 18</b>	<b>Parks &amp; Parkways Advisory Board, 6:00 p.m.</b>

**Additional Meetings and Events were noted:**

<b>Monday, November 23</b>	<b>Rec. Advisory Board 6:00 p.m.</b>
<b>Tuesday, December 8</b>	<b>Regular Commission Meeting 7:00 p.m.</b>
<b>Saturday, December 19</b>	<b>Winterfest 11:00 a.m. – 3:00 p.m.</b>
<b>Saturday, November 21</b>	<b>Unveiling of New Sign 11:00 a.m. 12 noon pavilion ceremony</b>

**15. ADJOURNMENT**

There being no further business, the meeting adjourned at 8:05 p.m.

Commission approved \_\_\_\_\_

Attest:

\_\_\_\_\_  
John Hornbuckle, Mayor

\_\_\_\_\_  
Kim Prenter Village Clerk



# **Village of Biscayne Park**

## **MINUTES**

### **REGULAR MEETING**

**Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Tuesday, December 8, 2009, 7:00 pm**

#### **1. CALL TO ORDER**

#### **2. ROLL CALL**

Mayor Hornbuckle called the meeting to order at 7:05 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, Chester "Doc" Morris and Vice-Mayor Bob Anderson, Incoming Mayor Ross, Incoming Vice Mayor Childress and Incoming Commissioner Cooper. Present from Staff were Ana Garcia, Village Manager; John Hearn, Village Attorney; Mitchell Glansberg, Police Chief; Tony Sanchez, Police Captain; Holly Hugdahl, Finance Director; Marilu Manzo, Finance Clerk; Bernard Pratt, Public Works Director; Juan Carlos Bermudez, Mayor of Doral and Kim Prenter, Acting Village Clerk.

#### **3. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

#### **5. PRESENTATIONS**

##### **A. Canvassing Board Election Results of the December 1, 2009 Village Election Resolution #2009-19**

**A RESOLUTION OF THE COMMISSION OF THE  
VILLAGE OF BISCAYNE PARK, FLORIDA,  
CANVASSING RETURNS AND CERTIFYING THE  
ELECTION OF THE VILLAGE OF BISCAYNE  
PARK, MIAMI DADE COUNTY, FLORIDA, HELD  
DECEMBER 1, 2009, DESIGNATING THE PERSONS  
ELECTED TO OFFICE AND LENGTH OF TERMS;  
SETTING AN EFFECTIVE DATE**

Attorney Hearn read the title of the resolution.

**Motion** was made by Commissioner Mallette, seconded by Commissioner Morris to accept Resolution 2009-19. On voice vote motion carried 5/0.

Outgoing Commissioner Morris congratulated the new commissioners and encouraged them to read the charter and take the ethics course. He suggested they let the manager manage without any micro managing.

Outgoing Commissioner Mallette congratulated the new commissioners and thanked the community, staff and family for their support during her term.

Outgoing Mayor Hornbuckle congratulated the new commissioners and thanked his fellow commissioners, staff, residents and family.

Plaques of appreciation were presented to Outgoing Commissioner Mallette and Outgoing Mayor Hornbuckle.

**B. Installation of New Commissioners**

Commissioner Al Childress took the Oath of Office which was administered by Mayor Juan Carlos Bermudez.

Commissioner Bryan Cooper took the Oath of Office which was administered by Clerk Prenter.

Commissioner Roxanna Ross took the Oath of Office which was administered by Attorney Hearn.

Commissioner Anderson expressed his views regarding the qualifications for a mayor.

**C. Reorganization meeting to select the Mayor and Vice Mayor**

Commissioner Cooper nominated Commissioner Bernard for Mayor noting his many accomplishments and qualifications.

Commissioner Childress nominated Commissioner Ross for Mayor noting her term is for four years.

On Voice Vote Commissioner Bernard and Cooper voted Aye for Commissioner Bernard as Mayor.

On Voice Vote Commissioner Childress, Anderson and Ross voted aye for Commissioner Ross as Mayor. Commissioner Ross was voted Mayor.

*The record will reflect there was a five minute recess.*

The process for Vice Mayor to remain as historically done according to the charter: alpha sequence with most senior commissioner taking the final term.

Commissioner Al Childress was appointed to the seat of Vice Mayor.

**6. ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA**

Commissioner Anderson requested the minutes be withdrawn and reviewed at the next meeting.

**Motion** was made by Vice-Mayor Childress to approve the minutes. Following some discussion he withdrew his motion.

Commissioner Cooper requested the following be added to the agenda:

- Discussion on North Miami Density Board (New Business item 12d)

- Consideration of Treatment of Diseased Trees (Old Business item 11b)
- Reconsider Interlocal with Miami Dade (Old Business item 11a)

#### **4. PUBLIC COMMENTS RELATED TO AGENDA ITEMS**

Mr. Dan Keys feels there may be some redundancy having both an Ecology board and Parks and Pathway board.

Ms. Tracy Trummann is in favor of an Ecology Board.

#### **7. CONSENT AGENDA (Motion to be made for all as one or remove for discussion)**

- A. Approval of Minutes - September 30, 2009 Special Meeting, October 6, 2009 Regular Meeting, October 28, 2009 Joint Meeting and November 3, 2009 Regular Meeting**
- B. Contract for Disaster Debris**
- C. Contract for Emergency Services**
- D. Landscape Maintenance Memorandum**
- E. Receipt of 4<sup>th</sup> Quarter Financial Report for period ending 9/30/09**
- F. Approval of Expedition of forfeiture of funds for complex investigation**
- G. Five Year Capital Projects Plan Resolution (Draft & Adopt)**

Items A and G were pulled and tabled for the January meeting.

**Motion** was made by Commissioner Bernard, seconded by Commissioner Anderson to accept items B, C & F of the consent agenda. On voice vote motion carried 5/0.

A discussion ensued with regard to item D, the landscape maintenance memorandum. The manager will go back and review the old contract and meet with the Financial Director to inquire on the potential lost of revenue by signing the contract.

**Motion** was made by Commissioner Cooper, seconded by Commissioner Anderson to approve the agreement. On voice vote motion carried 5/0.

A lengthy discussion and explanation ensued with regard to item E, the end of year fiscal report. A Power point presentation and report was given by the Finance Clerk, Marilu Manzo, a copy of which is attached for the record.

- It was noted that prior to 2008 there was not a separate sanitation fund; previously the sanitation department was included in the general fund.
- The Village is \$64,000 under revenue of what it budgeted.

**Motion** was made by Commissioner Cooper, seconded by Commissioner Anderson to accept the 4<sup>th</sup> quarter financial report. On voice vote motion carried 5/0.

#### **8. PUBLIC HEARINGS**

Mayor Ross requested a resolution allowing for public comments on all first readings of ordinances be presented at the January meeting.

## **9. ORDINANCES – 1<sup>st</sup> READING**

**A.**

### **ORDINANCE 2009-7**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AND RENEWING PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, A FRANCHISE FOR THE PURPOSE OF SUPPLYING NATURAL, MANUFACTURED, AND OTHER GAS TO THE VILLAGE, PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE**

Attorney Hearn read the title of the ordinance.

This Ordinance and Agreement with People's Gas System, a division of Tampa Electric Company, is to renew a non-exclusive franchise agreement allowing the franchisee to maintain and operate a gas system facility in the Village of Biscayne Park. The proposed agreement is for a three-year period with automatic three-year renewals, unless the Village or the franchisee provides sixty-days notice of termination. The Franchise Agreement, consistent with the previous Agreement and with other municipalities, provides for a six percent franchise fee.

There are currently 257 Village of Biscayne Park residents who receive natural gas from the franchisee. The Village Finance Director has found that last year, the village received a franchise fee of \$2,718.49, six percent of the gross revenue.

If approved, the second reading will be in January.

A representative from the franchisee, Richard Wall, addressed the following:

- Encourage more residents to utilize the natural gas service through an energy conservation program allowing residents to request service and secure rebates and incentives through a State program.
- Two maps indicating the location of the lines were presented to the Village Manager.
- Information and policies regarding getting gas to potential customers is now available on the website, [tecoenergy.com](http://tecoenergy.com)

A discussion ensued with regard to the contents of the agreement.

It was requested a provision in the contract be included that would have some language about expanding the main so service could be offered to more than only 257 residents within the village.

**Motion** was made by Commissioner Anderson, seconded by Commissioner Cooper to approve Ordinance 2009-7 subject to the requested provision. The motion carried by roll call vote, as follows:

Ayes: Commissioners Anderson, Bernard, Cooper Vice-Mayor Childress, Mayor Ross

**B. ORDINANCE 2009-9**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA PURSUANT TO SECTION 166.041, FLORIDA STATUTES, TO AMEND ORDINANCE 2008-06 ADOPTED ON SEPTEMBER 23, 2008 FINALIZING AND ADOPTING THE ANNUAL OPERATING BUDGET AND CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEAR 2008-2009, BY AMENDING VARIOUS PARTS OF THE BUDGET CONSISTENT WITH EXHIBIT "A", ATTACHED HERETO; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE**

Attorney Hearn read the title of the ordinance.

Mayor Ross asked for public comment. There being none, the public comment was closed.

The Village Manager recommended approval of Ordinance 2009-9.

It was suggested budget workshops be scheduled. It was noted a contingency should be included in the budget going forward.

**Motion** was made by Commissioner Anderson, seconded by Vice Mayor Childress to approve Ordinance 2009-9. The motion carried by roll call vote, as follows:

Ayes: Commissioner Anderson, Vice-Mayor Childress, Mayor Ross

Nays: Commissioners Bernard and Cooper

**Capital Improvement amendment – TBS**  
**Police Forfeiture amendment - TBS**

**10. RESOLUTIONS**

**RESOLUTION #2009-20**

**A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AUTHORITY TO MEMBERS OF THE VILLAGE COMMISSION TO SERVE AS SIGNATORIES ON ALL BANKING DOCUMENTS RELATED TO THE VILLAGE OF BISCAYNE PARK; REQUIRING TWO SIGNATURES FOR**



## **THE TRANSFER OF FUNDS AND UPDATING ACCOUNT INFORMATION; PROVIDING FOR AN EFFECTIVE DATE**

Attorney Hearn read the title of the resolution.

**Motion** was made by Commissioner Bernard, seconded by Commissioner Anderson, to approve Resolution 2009-20.

Vice-Mayor Childress noted commissioners should not be signers; it should be the authority of the Village Manager and someone else in the administration such as the Finance Director as a second. Commissioners are policy makers and he personally does not want to sign checks.

It was proposed the Police Chief be a second signer.

Commissioner Bernard recommended all commissioners sign. It is a learning experience on how the Village funds are spent. He encouraged the Mayor to sign all checks and other commissioners be added as backup.

A discussion ensued on check signing and it was suggested the resolution be approved as is, encouraging the Mayor and Village Manager to sign all checks but all the commissioners remain on the signature cards as backup.

The prior motion carried 4/1 with Mayor Ross, Commissioners Bernard, Anderson and Cooper in favor and Vice Mayor Childress against

### **11. OLD BUSINESS - None**

#### **A. Reconsider Interlocal Agreement with Miami Dade**

Commissioner Cooper noted the prior commission voted not to proceed with a grant for \$33,000 from the Federal Transit Administration. The deadline has changed and there is time to reconsider this action.

**Motion** was made by Commissioner Cooper, seconded by Commissioner Bernard to reconsider last month's action to cancel Interlocal Agreement with Miami Dade County. On voice vote motion carried 3/2 with Vice-Mayor Childress and Commissioner Anderson voting no.

A discussion ensued with regard to the Interlocal Agreement with the outcome being the Village Manager was directed to pursue options and investigate the possible change of scope and this item will be carried forward to January.

Discussion ensued with regard to the North Miami Density Board program with the outcome being this item was deferred to the January meeting with direction given to Village staff to begin working with North Miami staff.

### **12. NEW BUSINESS**

#### **A. Discussion of the Ecology Board and its purpose (Commissioner Bernard)**

Discussion ensued with regard to the formation of an Ecology Board with the outcome being this item will be placed under Old Business on the January meeting agenda and the commission will bring candidates who are interested in serving on this Board to the meeting. Commission Bernard will provide criteria for candidates.

**B. Discussion of Committee Agendas and Minutes, including when and how they should be made public (Commissioner Bernard)**

Commissioner Bernard suggested that at least 72 hours prior to a meeting agendas and minutes be posted on the website to allow public full viewing. Committee meeting minutes should also be posted in a timely manner.

The commission should encourage the committees to post their minutes. The web mistress can contact the chair people on the different committees and encourage them to timely post their agendas provided it clears the Village Clerk scrutiny.

**C. Discussion of Village Clerk contract**

Discussion ensued with regard to staffing with determination that the Village will investigate efficiencies; but it was noted a full time 40 hour position is required to fulfill clerking duties.

The Village Manager will proceed to seek a full time individual who can perform clerk functions as well as website and office managing.

**D. Consideration of Treatment of Diseased Trees**

Discussion ensued with regard to the treatment of diseased trees and it was determined time is of the essence and staff will put a plan together. This is a maintenance issue and the Village Manager will follow up staying within the reasonable budgeted cost for treatment.

**13. GOOD AND WELFARE (PUBLIC)**

- It was noted there is a problem with draft minutes not being acted upon, postponed and the loss of a month because of meeting schedules.
- The records of the community are important but keep in mind the committees are made up of volunteers.
- It was suggested the term of board members and committee members should be reviewed.

**14. REPORTS**

**A. Committee Reports**

There being no reports, the next item followed.

**B. Village Attorney Comments**

Attorney Hearn suggested the committee members for the ecology board be reviewed.

**1. Discussion of One Time Use of Capital Improvements Fees – Water ("CIF-Water")**

At the November meeting it was noted that Miami was having a meeting where they were proposing by resolution to amend an ordinance to allocate \$1.9 million with regard to capital improvements for the renovation of water plants and other structures and a pass through fee for water and sewage.

He suggested a process be set up with the city to communicate with the new manager.

### **C. Village Manager Comments**

A copy of the Village Manager Report is attached for the record.

Manager Garcia requested the January meeting be changed to January 12th in order for the audit to be available to the commission. There was consensus to this.

It was suggested the agendas be available one week prior to the meetings. It was requested agenda items be provided with backup to the clerk by the prior Thursday.

### **D. Comments**

#### **1. Commissioner Bernard**

- Noted follow up is needed on the art in public places for this pavilion.
- Manager Garcia noted rather than use the art in places for just one project we were able to get approval from the county with the new contract so we will combine both the pavilion and this area to be able to have one nice arcade. The one for the Public Works will be done separately.
- Email practices – anytime a commissioner sends an email to the Manager it requires a copy to the clerk for record purposes. Can we send it to a storage account? Attorney Hearn noted it can be stored separately.
- He has never seen the September 1, 2009 minutes.
- Donations to the Village are tax deductible and it was suggested the use of donations be placed in the hands of residents. This will require a change to the by-laws and will be discussed at a future meeting.
- On December 16th from 2:00 p.m. to 6:00 p.m. old computer equipment can be brought to North Miami.
- Extended congratulations to the new mayor and commissioners.

#### **2. Commissioner Cooper**

- Pleased to find out moving to a five-day work week which will cut overtime costs and give more flexibility to patrolling.
- Discussed with the Manager that an element of the charter requires that the voting record for all commissioners be listed on chronological register and should be made available be placed on the website.
- Extended congratulations to the new Mayor.

#### **3. Commissioner Anderson**

- Extended wishes to all for a great holiday.

#### **4. Vice-Mayor Childress**

- Extended wishes to all for a great holiday season.

- Thanked everyone for their support and congratulated Commissioner Cooper and the new Mayor.

#### **5. Mayor Ross**

- Reminded everyone about the Winterfest on December 19<sup>th</sup> from 11:00 a.m. to 3:00 p.m.
- There is a best dressed house competition – residents should submit their address at the rec center. The deadline is December 16<sup>th</sup>.
- Toys for Tots donations can be made at the rec center.
- Thanked neighbors for electing her and colleagues for allowing her to serve with them. They will work together on items important to the Village.

#### **15. ANNOUNCEMENTS – All public meetings are held at the Ed Burke Recreation Center 11400 NE 9<sup>th</sup> Court**

<b>Wednesday, December 16, 2009</b>	<b>Parks &amp; Parkways Committee, 6:00 p.m.</b>
<b>Saturday, December 19, 2009</b>	<b>Winter Festival 11:00 a.m. – 3:00 p.m.</b>
<b>Monday, December 21, 2009</b>	<b>Planning &amp; Zoning Board, 6:30 p.m.</b>
<b>Friday, December 25, 2009</b>	<b>Village Hall Closed for Christmas Holiday</b>
<b>Friday, January 1, 2010</b>	<b>Village Hall Closed for New Year's Day</b>

#### **16. ADJOURNMENT**

There being no further business, the meeting adjourned at 11:05 p.m.

Commission approved \_\_\_\_\_

Attest:


\_\_\_\_\_  
Roxanna Ross, Mayor

\_\_\_\_\_  
Village Clerk

**7B**

**BISCAYNE PARK POLICE DEPARTMENT**

**MEMORANDUM**

TO: Ms. Ana M. Garcia, Village Manager  
FROM: Chief Mitchell Glansberg   
DATE: December 28, 2009  
CC: Mayor Roxanne Ross, Village Commission, Mrs. Kim Prenter,  
Village Clerk  
RE: Agenda Item: Federal Forfeiture Funds Expenditure

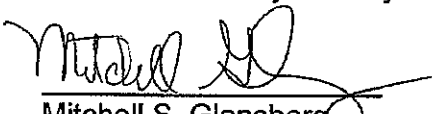
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**Federal Forfeiture Funds Expenditure:**

The Village of Biscayne Park Police Department is seeking expenditure of \$312.84 which is needed to pay for costs from 11/21/09-12/22/09 associated with a protracted and complex investigation as authorized by Chapter 932 Florida Statutes.

**CERTIFICATION:**

*I, Mitchell S. Glansberg, Chief of Police, certify that all funds from the above request(s) will be utilized for law enforcement purposes and comply with the requirements of the State of Florida Forfeiture Guidelines and The Department of Justice/Treasury Forfeiture Guidelines, where applicable. The above request has been reviewed and approved by the office of the City Attorney.*

  
Mitchell S. Glansberg  
Chief of Police

## **NINTH ORDER OF BUSINESS**

**9A**



**ORDINANCE NO. 2009-4**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF  
THE VILLAGE OF BISCAYNE PARK, FLORIDA,  
GRANTING FLORIDA POWER & LIGHT COMPANY,  
ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC  
FRANCHISE; IMPOSING PROVISIONS AND  
CONDITIONS RELATING THERETO; PROVIDING  
FOR MONTHLY PAYMENTS TO THE VILLAGE OF  
BISCAYNE PARK, FLORIDA; PROVIDING FOR  
CONFLICT; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the Village Commission of the Village of Biscayne Park, Florida recognizes that the Village of Biscayne Park and its citizens need and desire the continued benefits of electric service; and

WHEREAS, the provision of such service requires substantial investment of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the Village of Biscayne Park does not desire to undertake to provide such services; and

WHEREAS, Florida Power & Light Company (FPL) is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, there is currently in effect a franchise agreement between the Village of Biscayne Park and FPL, the terms of which are set forth in Village of Biscayne Park Ordinance No. 201, passed and adopted April 1, 1980, and FPL's written acceptance thereof dated April 28, 1980 granting to FPL, its successors and assigns, a thirty (30) year electric franchise ("Current Franchise Agreement"); and

WHEREAS, FPL and the Village of Biscayne Park desire to enter into a new Agreement (New Franchise Agreement) providing for the payment of fees to the Village of Biscayne Park in exchange for the nonexclusive right and privilege of supplying electricity and other services within the Village of Biscayne Park free of competition from the Village of Biscayne Park, pursuant to certain terms and conditions, and

WHEREAS, the Village Commission of the Village of Biscayne Park deems it to be in the best interest of the Village of Biscayne Park and its citizens to enter into the New Franchise Agreement prior to expiration of the Current Franchise Agreement;

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE  
COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:**

**Section 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

**Section 2.** There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the Village of Biscayne Park, Florida, and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (hereinafter called "facilities"), for the purpose of supplying electricity and other services to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

**Section 3.** The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic, the

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location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers, and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by law.

**Section 4.** The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all

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liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

**Section 5.** All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

**Section 6.** As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal 5.9 percent of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed 5.9 percent of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited, as in the existing franchise Ordinance No. 201, to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for

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propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; (h) other service charges.

**Section 7.** If during the term of this franchise the Grantee enters into a franchise agreement with any other municipality located in Miami-Dade County, Florida where the number of Grantee's active electrical customers is equal to or less than 50,000, the terms of which provide for the payment of franchise fees by the Grantor at a rate greater than 5.9% of the Grantee's residential, commercial and industrial revenues (as such customers are defined in FPL's tariff), under the same terms and conditions as specified in Section 6 hereof, the Grantee, upon written request of the Grantor, shall negotiate and enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under Section 6 hereof shall be no greater than that percentage which the Grantee has agreed to use as a basis for the calculation of payments to the other Miami-Dade County municipality, provided, however, that such new franchise agreement shall include additional benefits to the Grantee, in addition to all benefits provided herein, at least equal to those provided by its franchise agreement with any the other Miami-Dade County municipality. Subject to all limitations, terms and conditions specified in the preceding sentence, the Grantor shall have the sole discretion to determine the percentage to be used in calculating monthly payments, and the Grantee shall have the sole discretion to determine those benefits to which it would be entitled, under any such new franchise agreement.

**Section 8.** As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical

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distribution system established solely to serve any retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies), and (c) not to seek to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s). Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, all of the terms and conditions of this franchise shall remain in effect.

person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 60 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 60 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall be effective on the date of delivery of such notice.

**Section 10.** If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance

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written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's Clerk and termination shall take effect on the date of delivery of such notice.

**Section 11.** Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

**Section 12.** Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this franchise and entitle the Grantee to withhold all or part of the payments provided for in Section 6 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination in the matter. The Grantor

Ordinance 2009-4



recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

**Section 13.** The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained, and each party shall bear its own costs, fees and expenses associated with any such reasonable examination of the records prepared and kept by Grantee in the ordinary course of Grantee's business. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Grantor waives, settles and bars all claims relating in any way to the amounts paid by the Grantee under the Current Franchise Agreement embodied in Ordinance No. 201 not asserted in writing within sixty days after the effective date of this Ordinance.

**Section 14.** The provisions of this ordinance are interdependent upon one another, and if any of the provisions of this ordinance are found or adjudged to be invalid, illegal, void or of no effect, the entire ordinance shall be null and void and of no force or effect.

**Section 15.** Grantor acknowledges it is fully informed concerning the existing franchise granted by Miami-Dade County, Florida, to the Grantee herein, and accepted by the Grantee as set out in Ordinance No. 60-16 adopted on May 3, 1960, and subsequently renewed and accepted by the Grantee as set out in Ordinance No. 89-81 adopted on September 5, 1989 by the Board of County Commissioners of Miami-Dade County, Florida. Grantor agrees to indemnify and hold Grantee harmless against any and all liability, loss, cost, damage and expense incurred by Grantee in respect to any claim asserted by Miami-Dade County against Grantee arising out of the franchise set out in the above referenced ordinances for the recovery of any sums of money paid by Grantee to Grantor under the terms of this New Franchise Agreement. Grantee acknowledges and Grantor hereby relies on the Dade County Resolution No. R-709-78 adopted on June 20, 1978 in the granting of this franchise.

**Section 16.** As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

**Section 17.** Ordinance No. 201, passed and adopted April 1, 1980 and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

**Section 18.** As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance.

PASSED on first reading this \_\_\_\_5th\_\_\_\_ day of \_\_\_\_February \_\_, 2008.

PASSED AND ADOPTED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2008.

The foregoing Ordinance was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

**The foregoing ordinance upon being put to a vote, the vote was as follows:**

_____	Mayor Ross: _____
Roxanna Ross, Mayor	Vice Mayor Childress: _____
	Commissioner Anderson: _____
Attest:	Commissioner Bernard: _____
	Commissioner Cooper: _____

\_\_\_\_\_  
Kim Prenter, Village Clerk

Approved as to form:

1<sup>st</sup> Reading – February 5, 2008  
2<sup>nd</sup> Reading – February 2, 2010

\_\_\_\_\_  
John J. Hearn, Village Attorney

**9B**

## MEMORANDUM

**TO:** Honorable Village Commission  
Ana M. Garcia, Village Manager  
Kim Prenter, Village Clerk

**FROM:** John J. Hearn, Village Attorney

**RE:** Renewal of TECO Gas Franchise Agreement

**DATE:** January 5, 2010

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Attached please find a proposed Ordinance and Agreement with People's Gas System, a division of Tampa Electric Company, to renew a non-exclusive franchise agreement allowing the franchisee to maintain and operate a gas system facility in the Village of Biscayne Park, which passed first reading at the December 8, 2009 Commission meeting. The proposed Agreement is for a three-year period with automatic three-year renewals, unless the Village or the franchisee provides sixty days notice of termination. The Franchise Agreement, consistent with the previous Agreement and with other municipalities, provides for a six percent franchise fee.

There are currently 257 Village of Biscayne Park residents who receive natural gas from the franchisee. The Village Finance Director has found that last year, the Village received a franchise fee of \$2,718.49, six percent of the gross revenue.

There will be a representative from the franchisee at the Commission meeting to answer any further questions. I have been informed that any Village resident that would like to receive services from the franchisee can contact their residential customer's division at 1-800-235-4427.

JJH:dlw

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**WHEREAS**, the Village Commission of the Village of Biscayne Park finds it to be in the best interests of the residents of the Village to grant and renew a franchise for the purpose of supplying natural, manufactured, and other gas to Peoples Gas System, a division of Tampa Electric Company; now, therefore

**Section 1.** The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct, and are hereby incorporated herein and made a part hereof.

**Section 3.** This ordinance, as well as the Franchise Agreement (Exhibit "1") shall take effect upon adoption.

**Section 4.** It is the intention of the Village Commission of the Village of Biscayne Park, Florida that the provisions of this ordinance shall become and be made a part of the Village of Biscayne Park Code of Ordinances. The sections of this ordinance

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may be re-numbered or re-lettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

**Section 5.** All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be, and the same are hereby repealed to the extent of such conflict.

**Section 6.** If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the validity of the remaining portions or applications remaining in full force and effect.

The foregoing Ordinance was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by \_\_\_\_\_.

PASSED AND ADOPTED upon first reading this \_\_6th\_\_ day of \_\_October\_\_, 2009.

PASSED AND ADOPTED upon second reading this \_\_8<sup>th</sup>\_\_ day of \_\_December\_\_\_\_\_, 2009.

_____, Mayor	Commissioner Anderson : ____
	Commissioner Bernard : ____
	Commissioner Childress : ____
	Commissioner Cooper : ____
	Commissioner Ross : ____

**ATTEST:**

\_\_\_\_\_  
Kim Prenter , Acting Village Clerk

**APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:**

\_\_\_\_\_  
John J. Hearn, Village Attorney

## **NON-EXCLUSIVE FRANCHISE AGREEMENT**

This NON-EXCLUSIVE FRANCHISE AGREEMENT (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 between the Village of Biscayne Park, Florida, a Florida municipal corporation ("Village") and Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("Franchisee"). (Village and Franchisee shall sometimes be collectively referred to as the "Parties" and, individually, as a "Party").

### **WITNESETH**

WHEREAS, the Village and Franchisee were parties to a franchise agreement that expired in December, 2008; and

WHEREAS, the Village desires to grant a non-exclusive franchise to permit the construction, maintenance and operation of gas facilities within the Village; and

WHEREAS, the Franchisee has expressed its capability to provide such services.

NOW, THEREFORE, the Parties agree as follows:

### **SECTION 1. DEFINITIONS**

a. "Village" shall mean the Village of Biscayne Park, Miami-Dade County, Florida.

b. "Franchise" shall mean this Agreement and the rights granted to Franchisee hereunder.

c. "Franchisee" shall mean Peoples Gas System, a division of Tampa Electric Company, its successors, assigns, contractors, subcontractors and agents.



d. "Gas system facilities" or "facilities" shall mean and include, but not be limited to, gas mains, pipes, supply pipes, conduits, ducts and any other hardware or other means of conveying gas for the purpose of supplying natural, manufactured and other gas to the meter of the Customer, constructed both prior to and during the term of this Agreement.

e. "Customers" shall mean all residences, businesses, governmental entities and industrial establishments located within the Village purchasing gas from Franchisee.

f. "Fiscal Year" shall mean October 1<sup>st</sup> through September 30<sup>th</sup> of each year.

g. "Franchise Fee" shall mean the fees described in Section 8 of this Agreement.

h. "Franchise Fee Factor" shall mean the value of compensation as computed in Section 8 as if it had been calculated as six percent (6%) of Franchisee's Gross Revenues (as defined by the Florida Public Service Commission ("FPSC")) from the sale, transportation, distribution and delivery of natural gas to Customers in the Village.

i. "Uncollectible accounts" shall mean any account which has been closed and the deposit applied and is sixty (60) days past due.

## **SECTION 2. FRANCHISE**

The Franchisee is given the non-exclusive right, privilege and franchise to construct, maintain and operate only gas system facilities in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places of the Village. The Franchise shall be exercised in accordance with established

industry practices regarding gas system construction and maintenance and the orders, rules and regulations of the FPSC or any other regulatory body having jurisdiction over the Franchisee and, to the extent permitted by law, the Village's installation and maintenance standards for the purpose of supplying natural, manufactured and other gas to the Village, its successors and the citizens of the Village and Miami-Dade County. The Franchise term shall be the period of time commencing as of the effective date of this Agreement and continuing in full force and effect until expiring at midnight on December 31, 2012; provided, however, that the Franchise will automatically renew for successive three (3) year terms until such time as one of the parties notifies the other, with no less than sixty (60) days written notice, prior to the expiration of the then-current term, that it does not want the Franchise to automatically renew. If either Party elects not to renew the Franchise, then the Franchise shall expire upon the conclusion of the then current term.

This grant of authority to Franchisee is strictly limited to the provision of natural gas service only. It is explicitly recognized that this Franchise does not limit the Franchisee's ability to operate a liquefied petroleum (commonly referred to as LP gas, bottled gas, or propane) business within the incorporated limits of the Village, similar to any other liquefied petroleum business nor does it limit the Village's ability to assess utility tax upon the liquefied petroleum business within the limits permitted under Florida Statutes. In the event Franchisee desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential Customers, including but not limited to providing public communications, leased fiber optic capacity, video services, telecommunication services or any other

services other than the provision of gas, or providing any other use to existing or potential Customers, Franchisee shall seek additional and separate permission from the Village for such activities.

The Franchisee shall not sell, assign, lease or otherwise alienate and transfer this Franchise without the prior consent of the Village provided that such consent shall not be unreasonably withheld or delayed by the Village. Notwithstanding the foregoing, Franchisee shall have the right, without obtaining the Village's consent, to transfer or assign this Franchise as a result of a total or complete merger or consolidation of Franchisee with a third party, or sale of the Peoples Gas division assets. Any sale, assignment, lease or other alienation and transfer of this Franchise shall be subject to the conditions that (i) the successor-in-interest to the facilities and/or the rights under this Franchise shall have agreed in writing to be bound by the terms and conditions of this Agreement, and (ii) at least sixty (60) days prior to the effective date of any such transfer, all Franchise Fees owing the Village hereunder shall have been paid and any material Franchise compliance issues shall have been resolved. Any dispute relating to or arising out of the provisions of this paragraph shall be subject to the arbitration provisions set forth below in Section 22 of this Agreement.

Franchisee may, without obtaining the Village's consent, pledge this Franchise and/or the facilities as security, provided, however, in the event of a foreclosure of the pledge, the Village shall have the right to revoke the Franchise under Section 14 below.

Franchisee shall submit to the Village, upon request, a copy of its audited financials published in annual reports of Franchisee or Franchisee's affiliate or its successor.

### **SECTION 3. USE AND MAINTENANCE OF PUBLIC RIGHTS-OF-WAY**

Franchisee's gas system facilities shall be located or relocated and so constructed as not to interfere with, including but not limited to, existing sanitary sewers, existing drainage systems, water pipes, electrical conduits, communications cables or other public utility service facilities. The Franchisee's facilities shall not obstruct or interfere with, including but not limited to, the public uses of streets, roads, highways or alleys. The location or relocation of all facilities shall be made after Franchisee has received all applicable permits, approvals and permissions from the Village and such other governmental entities as may be necessary, and the location(s) or relocation(s) shall be subject to the Village's supervision and approval. In consideration for the Franchise Fee paid under this Agreement, the Franchisee will not be assessed any permit fees associated with the installation of, or the construction of, any gas system facilities. In the event that Franchisee is acting in its proprietary function as a retail provider of gas equipment or appliances, Franchisee shall seek the appropriate permits from the Village. Franchisee shall cooperate with the Village at all times by providing timely and complete information regarding the exact location of its facilities including, but not limited to, maps, geographical information systems, plats, construction documents and drawings as may exist or be created from time to time. Franchisee and the Village shall cooperate and coordinate their efforts to make the most efficient and economical use of the gas system facilities.

If any street, highway or avenue is to be paved by the Village, the Village shall give written notice to the Franchisee not less than sixty (60) days prior to the commencement of paving. Provided the Franchisee does not already have a main in

the street, highway or avenue to provide natural gas service to the surrounding houses and other structures, Franchisee shall survey the surrounding houses and other structures to determine whether, in its sole discretion, expansion of gas system facilities in the street, highway or avenue in question is economically feasible. Where such expansion is determined to be economically feasible, the Franchisee shall construct such gas system facilities in the street, highway or avenue in question prior to paving by the Village. Where expansion is economically feasible, the Franchisee and the Village will work together in good faith to explore opportunities for expansion of the facilities and to encourage demand for natural gas by the residents and business located in the Village. However, in the event the Company believes that such construction may not be completed prior to the Village's planned paving schedule, the Parties agree to negotiate a revised paving schedule satisfactory to both Parties.

The Franchisee shall, at its own expense, replace, repair and restore without delay any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, property or structure of any nature, that may be damaged or displaced by the Franchisee in the conduct of its operations, and shall, at a minimum, restore all property to a condition equivalent to the condition immediately prior to the work and/or changes made by the Franchisee. Franchisee shall consider alternatives to open cutting of streets prior to the Village considering the issuance of any permit(s). Franchisee shall notify the Village when repair, replacement or other work is being conducted and completed. Franchisee shall take safety precautions to alert the public of work, which may include, but is not limited to, the use of barricades and signs prior to work taking place, as applicable. In the

event that Franchisee fails to (a) take safety precautions to alert the public of work in accordance with the preceding paragraph or (b) repair, replace and restore any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, property or structure of any nature in accordance with the preceding paragraph, then the Village shall, upon no less than five (5) days written notice to Franchisee, be entitled to pursue any of the following remedies at its discretion:

(A) Withhold the issuance of further permits to the Franchisee or its contractor; or

(B) Perform the work reasonably necessary to cure Franchisee's breach utilizing Village employees, agents or contractors, charge any and all reasonable costs, plus a sum equal to ten percent (10%) of the cost against the Franchisee, and require reimbursement within ten (10) days after the Franchisee's receipt of the bill(s) forwarded for reimbursement by the Village.

Failure of Franchisee to act or reimburse the Village shall constitute a material failure triggering the notice, cure and recourse provisions of Section 14 below.

Notwithstanding any provision to the contrary in this Agreement, the Village may not pursue any of the above remedies until such time as Franchisee has received written notice from the Village advising Franchisee of such breach and providing Franchisee with sufficient opportunity to cure such breach.

Franchisee shall, at its own expense, notify residents or businesses within the area where the work is designated to be performed, by door hanger or U.S. mail (with a copy to the Village Manager), for any main extension work in the right-of-way that will exceed forty eight (48) hours.

The Village shall reimburse the Franchisee for any cost or expense of any nature in connection with the location or relocation of Franchisee's gas system facilities made

necessary by the Village's improvement of any present or future Village-controlled public rights-of-way used or occupied by the Franchisee. The Franchisee and the Village shall not be liable for any cost or expense in connection with the location or relocation of its gas system facilities at the request of any non-governmental third party. Such requests shall not be honored until such non-governmental third party has made arrangements to reimburse the Franchisee and/or the Village, as the case may be in a manner satisfactory to such party(ies).

#### **SECTION 4. INSURANCE**

The Franchisee, at all times during the exercise of its Franchise, shall carry general liability insurance in the amount of Five Million Dollars (\$5,000,000.00) to indemnify any persons sustaining personal injury or property damage as a result of the actions of the Franchisee in the construction, operation or maintenance of its facilities. The Village shall be named as an additional insured. A certificate of insurance (including additional insured status) shall be filed with the Village Manager.

Notwithstanding the foregoing, the Franchisee may meet the insurance minimum using, in part or whole, self-insurance. In the event Franchisee elects to meet the insurance minimum using, in part or whole, self-insurance, the Franchisee shall provide the Village with documentation attesting to its self-insured status.

#### **SECTION 5. INSTALLATION OF GAS MAINS; MAP ON GAS LINES**

Before the commencement of the construction of any gas system facilities, the Franchisee shall provide a survey to the Village establishing the location, lines, grade elevations or any other information requested by the Village in connection with the gas system facilities. The laying of such facilities shall conform exactly to the designated

locations, lines, grade elevations or other conditions of the Village. After completion of any work, two copies of complete "As-Built" plans will be furnished to the Village. No street or other public way or place shall be excavated without Franchisee securing a permit from the Village. All expenses necessarily and reasonably incurred by the Village in connection with the provisions of this section shall be paid by the Franchisee. Franchisee agrees that the materials to be used in the construction, operation and maintenance of the gas system facilities and the service to be rendered shall be equivalent to those provided to the Franchisee's other franchised communities.

The Franchisee shall, at all times, keep an accurate map showing the location of all gas system facilities laid and maintained by Franchisee under this Franchise, which shall be accessible for inspection by Village officials at all times during reasonable hours.

#### **SECTION 6. ACCIDENTS OR DAMAGES**

The Village shall not be liable or responsible in any manner whatsoever for any accident, personal injury, property damage or any claim or damage that may occur in the course of the construction, operation or maintenance by Franchisee, its employees, agents, contractors, sublessees or licensees of any of its facilities, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the Village. Nothing in this Agreement shall be construed to affect in any way the Village's rights, privileges, and immunities under the doctrine of "sovereign immunity" as set forth in Section 768.28, Florida Statutes.



## **SECTION 7. INDEMNIFICATION**

Franchisee agrees to indemnify, defend and hold harmless the Village, its officers, agents and employees from and against any and all claims, suits, actions, and causes of action arising during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, caused by or arising out of Franchisee's negligent construction, operation or maintenance of its gas system facilities within the Village, including all costs, reasonable attorneys fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the Village, its officers, agents, employees or contractors. Nothing in this Agreement shall be construed to affect in any way the Village's rights, privileges, and immunities under the doctrine of "sovereign immunity" as set forth in Section 768.28, Florida Statutes. The provisions of this Section shall survive the termination of this Agreement.

## **SECTION 8. FRANCHISE FEE**

Within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the Village, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the Village and actually paid by Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectible accounts, from the sale, transportation,

distribution or delivery of natural gas to customers within the corporate limits of the Village. In the event any uncollectible account becomes collectable and/or is collected, an adjustment in amount due the Village shall be made in the next quarterly payment. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month. For purposes of this Section, Gross Revenues collected by the Franchisee shall include the portion of any customer deposits that are applied to amounts owed under customer accounts within the Village's corporate limits.

#### **SECTION 9. PARITY**

In the event the Franchisee enters into a franchise agreement with another Florida governmental entity in Miami-Dade, Broward or Palm Beach County, under which franchise fees are based upon a percentage of Gross Revenue that is higher than six percent (6%) of Franchisee's sales of natural gas to customers under such franchise, then the percentage basis of the Franchise Fee used in this Franchise shall be adjusted to provide for a Franchise Fee that equals the value of franchise fees that would result in the event that the percentage used in such other franchise agreement were applied to the gross revenues from sales of natural gas to customers in the Village and such adjustment shall be effective as of the first day of the month following the commencement date of the franchise for such other Florida governmental entity.

In the event the Franchisee enters into a franchise agreement with another Florida governmental entity in Miami-Dade, Broward or Palm Beach County, under which franchise fees are upon a volumetric calculation, then the Village shall be entitled to elect to continue to receive Franchise Fees based on a percentage of Gross

Revenues or to receive Franchise Fees calculated on the basis of six and eighty-eight one hundredths cents (\$0.0688) per therm for residential customers, three and twenty-five one hundredths cents (\$0.0325) per therm for commercial customers and one cent (\$0.01) per therm for industrial customers. An election to convert calculations of Franchise Fees payable to the Village hereunder to a per therm approach shall be effective as of the first day of the month following the Village's election to convert hereunder.

If, during the term of this Franchise Agreement, the Grantor, by franchise agreement or ordinance, allows other gas providers, gas consumers or gas transporters ("Alternate Gas Providers") the right, privilege or franchise to construct, maintain, operate or use gas facilities in, under, upon, over or across the present or future streets, alleys, bridges, easements or other public rights-of-way of the Village, for the purpose of supplying or delivering natural gas to customers located within the corporate limits of the Village or receiving such gas from a person other than the Grantee within such corporate limits, and imposes a franchise compensation obligation or an equivalent on such Alternate Gas Provider for any customer or class of customers that is less than that imposed with respect to the same customer or class of customers under this Franchise Agreement, the franchise compensation rate and/or base to which such rate is applied with respect to the same class of customers shall be reduced under this Franchise Agreement so that the franchise compensation paid hereunder for such customer class is no greater than the franchise compensation payable by such Alternate Gas Provider under the franchise agreement or ordinance applicable to it, when compared on a dollars-per-therm basis. In the event that the Grantor determines

not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Grantee's obligation to pay a franchise fee under this Franchise Agreement with respect to revenues derived from the provision of service by the Grantee to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished.

#### **SECTION 10. PERFORMANCE BOND**

At the time of its acceptance of the terms and conditions of this Agreement, the Franchisee shall file with the Village Clerk, after approval by the Village, an annual bond in the minimum sum of Fifty Thousand Dollars (\$50,000.00) having as a surety a company qualified to do business in the State of Florida and acceptable to the Village. The bond shall be conditioned on the full and faithful performance by the Franchisee of all requirements, duties and obligations imposed upon Franchisee by the provisions of this Agreement. The bond shall be furnished annually and shall provide a continuing guarantee of Franchisee's full and faithful performance at all times throughout the effective term of this Agreement.

#### **SECTION 11. RIGHT OF VILLAGE OF BISCAYNE PARK TO INTERVENE**

The Village reserves the right to intervene in any suit, action or proceeding involving any provision of this Agreement. Franchisee agrees to advise the Village of any such suits.

#### **SECTION 12. ACCOUNTS AND RECORDS; RIGHTS TO AUDIT**

The Franchisee shall establish and maintain appropriate accounts in accordance with generally accepted accounting methods, and shall maintain records in such detail that revenues within the limits of the Village are consistently declared and identified

separately from all other revenues. All records shall be maintained for a minimum of three (3) years, or longer if required by applicable regulatory bodies. The Franchisee further agrees that the Village, by any duly authorized representative, shall have the right during business hours, and with prior notice, to inspect and/or audit the books and records of the Franchisee that evidence the Franchise Fees and computations of Franchise Fee payments made by the Franchisee to the Village. If the Village decides to inspect and/or audit Franchisee's books and records, specifically Franchise Fee payments made to the Village and Franchise Fee computations, the Franchisee shall permit a Village representative to review the pertinent portion of the Franchisee's books and records including billing records at the Franchisee's office where these records are housed, during normal business hours. In the event that an audit of Franchisee's books determines that Franchisee made underpayment in any quarter and that the underpayment exceeded five percent (5%) of the amount actually due in such quarter, Franchisee shall pay interest at the rate of twelve percent (12%) per annum on the amount underpaid or not paid calculated from the date the amount was due to the date it was finally paid. Both the underpayment and interest shall be paid within thirty (30) days after receipt of demand by the Village.

### **SECTION 13. ANNEXATION BY VILLAGE**

Upon the Village's annexation of any property and reasonable notice to Franchisee thereof, the portion of Franchisee's gas system that may be located within such annexed territory, and upon the streets, alleys or public grounds, shall be subject to all the terms of this Franchise.

#### **SECTION 14. FORFEITURE OR REVOCATION OF FRANCHISE**

The Franchisee's material failure to comply in any respect with any of the provisions of this Franchise after written notice from the Village and a reasonable opportunity, no less than sixty (60) days, to cure shall be grounds for forfeiture of this Franchise pursuant to which the Village shall have the right to revoke and cancel all franchise rights granted in this Agreement; provided, however, that Franchisee's failure to comply with any provision of this Franchise as the result of a strike, lockout, or any other cause beyond the reasonable control of the Franchisee (collectively, "Force Majeure") shall not constitute grounds for the Village's revocation and cancellation of any rights hereunder. In the event Franchisee in good faith disputes the Village's determination of the Franchisee's material non-compliance with the provision(s) of this Franchise specified in the Village's notice, or the Village disputes the Franchisee's assertion that its failure to comply with the provision(s) of this Franchise was or is the result of Force Majeure, the Franchisee and the Village shall negotiate in good faith to resolve the dispute prior to submitting the dispute to arbitration as provided below. If any dispute remains unresolved thirty (30) days after the commencement of negotiations pursuant to this Section, such dispute shall be settled by binding arbitration pursuant to the provisions of Section 22 of this Agreement. Nothing in this Section 14 shall be construed as obligating a party to negotiate or arbitrate a renewal or extension of this Franchise.

Notwithstanding any provisions to the contrary, Franchisee acknowledges that nothing contained in this Agreement shall constitute a waiver by the City of any rights it

may possess at law (including but not limited to the power of eminent domain), or as afforded under Chapter 180, Florida Statutes.

#### **SECTION 15. DESIGNATED REPRESENTATIVES**

The following individuals are designated to represent the Village and Franchisee respectively on all matters concerning the Franchise. All written communication shall be given by mail, either regular or certified with return receipt requested, to the addresses provided, or at such other address as either Party may advise the other in writing:

For the Village:                      Village Manager  
   Village of Biscayne Park  
   640 NE 114 Street  
   Biscayne Park, Florida 33161

With a copy to:                      Village Attorney  
   Village of Biscayne Park  
   640 NE 114 Street  
   Biscayne Park, Florida 33161

For the Franchisee:                      General Manager  
   TECO People Gas  
   P.O. Box 2562  
   Tampa, Florida 33601-2562

#### **SECTION 16. NO WAIVER**

Nothing in this Agreement shall be construed as a surrender or waiver by the Village of its police powers or the authority to regulate the use of the public streets and/or other public places, provided no passage contravenes the material terms of this Franchise.

#### **SECTION 17. RIGHT TO ENFORCE**

Either Party shall have the right to enforce its rights in the event of a material breach of any obligation or either Party's failure to perform any substantial obligation

pursuant to this Franchise or to comply in any substantial respect with any material provision.

#### **SECTION 18. ATTORNEY FEES**

Except as otherwise provided, the Village and Franchisee agree that if litigation or arbitration becomes necessary to enforce any of the obligations, terms and conditions of this Franchise, the prevailing Party shall be entitled to recover a reasonable amount of attorney's fees and court costs, including fees and costs on appeal, from the non-prevailing party.

#### **SECTION 19. ENTIRETY**

This writing embodies the entire agreement and understanding between the Parties, and there are no other agreements and understandings, oral or written, with reference to this subject matter that are not merged and superseded.

#### **SECTION 20. GOVERNING LAW**

This Agreement shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

#### **SECTION 21. ARBITRATION**

The Parties agree that any dispute to which this Section applies shall be settled by binding arbitration. Either Party to this Agreement shall have the right to submit a covered dispute to binding arbitration pursuant to this Section by notifying the other Party of such election in writing. Within fifteen (15) days following the giving of such a notice by a Party, each Party shall furnish the other Party with the name, address and telephone number of a person designated by that Party to participate with a person designated by the other Party in selecting an individual to act as the sole arbitrator of



the dispute. If a Party fails to designate to the other Party a person to participate in the selection of the sole arbitrator, or if the persons so designated by the Parties fail, within thirty (30) days following the giving of notice of the dispute by the Party invoking the provisions of this Section, to agree on a sole arbitrator of the dispute, either Party to this Agreement shall have the right to apply to the Circuit Court for the Eleventh Judicial Circuit of the State of Florida for the appointment of such sole arbitrator. The Parties agree that the timing of, and rules governing the conduct of, the arbitration proceeding shall, unless otherwise agreed, be determined by the sole arbitrator. Unless otherwise agreed, the place of the arbitration shall be Biscayne Park, Florida. In making any award, the arbitrator shall be subject to any provisions of this Franchise which expressly limit remedies or damages. The award of the arbitrator shall be final and binding, and judgment upon such award may be entered by any court having jurisdiction thereof. The Parties shall share equally the compensation and expenses of the arbitrator and the expense of any hearing, and each Party shall bear the compensation and expenses of its own counsel and other representatives (if any). Each Party shall continue to perform its obligations under this Franchise pending final resolution of any dispute submitted to arbitration pursuant to this Section, unless to do so would be impossible or impracticable under the circumstances. Notwithstanding the pendency of any arbitration proceeding hereunder, a Party, without prejudice to the above procedures, may file a complaint for statute of limitations or venue reasons, or seek a preliminary injunction or other provisional judicial relief, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such

action, the Parties will continue to participate in good faith in the arbitration provided for above.

**SECTION 22. EFFECTIVE DATE**

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing by signature of this document within thirty (30) days of the Village's passage and adoption hereof.

WHEREFORE, the Parties have caused their duly authorized representatives to execute this Agreement on the date first written above.

PEOPLES GAS SYSTEM

VILLAGE OF BISCAYNE PARK, FLORIDA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

\_\_\_\_\_  
Frank R. Spence, Village Manager

ATTEST:

\_\_\_\_\_  
Village Clerk

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

\_\_\_\_\_  
Village Attorney

9C

**ORDINANCE NO. 2009-9**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF  
THE VILLAGE OF BISCAYNE PARK, FLORIDA  
PURSUANT TO SECTION 166.041, FLORIDA STATUTES,  
TO AMEND ORDINANCE 2008-06 ADOPTED ON  
SEPTEMBER 23, 2008 FINALIZING AND ADOPTING THE  
ANNUAL OPERATING BUDGET AND CAPITAL  
IMPROVEMENT PROGRAM FOR FISCAL YEAR 2008-  
2009, BY AMENDING VARIOUS PARTS OF THE BUDGET  
CONSISTENT WITH EXHIBIT "A," ATTACHED  
HERETO; PROVIDING FOR CONFLICT; PROVIDING  
FOR SEVERABILITY; PROVIDING AN EFFECTIVE  
DATE**

WHEREAS, in accordance with the Village of Biscayne Park's Charter and all laws of the State of Florida, on September 23, 2008, the Village Commission finalized and adopted its operating budget for Fiscal Year 2008-2009, which is incorporated herein; and

WHEREAS, the Village Commission acknowledges that amendments are required to the Annual Operating Budget for Fiscal Year 2008-2009, as designated in Exhibit "A," attached hereto;

**NOW, THEREFORE BE IT ORDAINED BY THE VILLAGE COMMISSION OF  
THE VILLAGE OF BISCAYNE PARK, FLORIDA:**

**Section 1.** Each and all the foregoing Whereas clauses are true and correct and are incorporated herein.

**Section 2.** That the Annual Operating Budget Fiscal Year 2008-2009, approved by the Village Commission on September 23, 2008, is amended as designated in Exhibit "A," attached hereto.

**Section 3.** The Village Commission hereby ratifies and confirms all other provisions of Ordinance 2008-6.

**Section 4.** **Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

**Section 5.** **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 6.** **Effective Date.** This Ordinance shall be effective upon adoption on second reading.

The foregoing Ordinance was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

**The foregoing ordinance upon being put to a vote, the vote was as follows:**

\_\_\_\_\_  
, Mayor

Attest:

\_\_\_\_\_  
Kim M Prenter, Acting Village Clerk  
Approved as to form:

\_\_\_\_\_  
John J. Hearn, Village Attorney

Commissioner Anderson : \_\_\_\_\_  
Commissioner Bernard : \_\_\_\_\_  
Commissioner Childress : \_\_\_\_\_  
Commissioner Cooper : \_\_\_\_\_  
Commissioner Ross : \_\_\_\_\_

1st Reading – December 8, 2009  
2<sup>nd</sup> Reading – January 5, 2010

FUND	GENERAL FUND REVENUES	FY 08-09 YEAR TO DATE 09/30/09	FY 08-09 ADOPTED BUDGET	FY 08-09 BUDGET CHANGE	FY 08-09 AMENDED BUDGET	EXPLANATION
OBJECT:	GENERAL FUND REVENUES					
315.10.01	Communications Service Tax	140,178	117,050	23,128	140,178	State audit, underpmt in prior yrs
380.00.00	Fund Balance / Carryover	128,200	128,200	128,200	128,200	Transfer from fund balance to cover expenses over budget
380.01.00	Proceeds from Capital Lease	128,810	128,810	128,810	128,810	Lease proceeds to purchase police cars
381.00.00	Administration Fees	50,000		50,000	50,000	
Total Revenues		447,188	117,050	330,138	447,188	
DEPARTMENT:	EXECUTIVE/VILLAGE COMMISSION					
511.40.01	Travel Conferences & Meetings	2,815	1,000	1,700	2,700	Membership dues, Mayor's Ball, Dinners
511.55.01	Special Events	7,080	3,900	3,300	7,200	75th Birthday
DEPARTMENT:	EXECUTIVE/ADMINISTRATION					
512.12.01	Regular Salaries	165,111	139,293	25,000	164,293	Spence & Harper payout
DEPARTMENT:	FINANCE					
513.32.01	Accounting & Audit Services	32,170	30,500	2,000	32,500	Add'l auditing
513.34.01	Consulting Services	103,714	75,000	29,000	104,000	Add'l required hours
DEPARTMENT:	GENERAL GOVERNMENT					
519.31.01	Attorney Legal Fees	110,831	60,000	31,000	91,000	Outside Counsel, Police matters
519.64.03	Capital Outlay	40,040	9,100	31,000	40,100	Trans to Cap Projects for Pavilion, Entry Sign, Rec Ctr
DEPARTMENT:	POLICE					
521.12.01	Regular Salaries	565,507	483,779	41,263	525,042	Marchese reinstatement
521.24.01	Workers' Compensation	142,459	79,867	23,000	102,867	Self-insured payments
521.64.02	Machinery & Equipment - Police Vehicles	128,810		128,810	128,810	Purchase of police cars
DEPARTMENT:	CODE ENFORCEMENT					
529.13.01	Other Salaries & Wages	2,128		2,128	2,128	Union requirements
529.14.01	Overtime	1,642		1,642	1,642	Meetings
529.46.01	R&M Equipment	2,022	1,200	800	2,000	Computer & auto repairs
DEPARTMENT:	PUBLIC WORKS					
534.12.01	Regular Salaries	99,319	114,909	(15,000)	99,909	Correct allocation of employee hours
534.23.01	Life, Health & Dental Insurance	21,279	27,654	(5,000)	21,654	Correct allocation of employee hrs
534.52.02	Gas & Oil	1,949	16,000	(14,000)	2,000	Correct allocation of gas by dept
534.63.02	Landscapeing		10,000	(10,000)	-	Not used
534.64.02	Machinery & Equipment	2,300		2,300	2,300	Ice machine
DEPARTMENT:	RECREATION					
572.14.01	Overtime	3,486		3,500	3,500	Thornell Overtime
572.19.01	Compensated Absences	37,500		37,500	37,500	Rec Director payout
572.25.01	Unemployment Compensation	11,175		11,175	11,175	Rec Director
572.74.01	Lease/Purchase	12,914	12,830	20	12,950	Interest allocation
Total Expenses		1,494,051	1,065,132	330,138	1,395,270	

OBJECT:		FY 08-09 YEAR TO DATE 09/30/09	FY 08-09 ADOPTED BUDGET	FY 08-09 BUDGET CHANGE	FY 08-09 AMENDED BUDGET	EXPLANATION
FUND 402	SANITATION FUND					
534.12.01	Regular Salaries	243,372	214,747	24,900	239,847	Correct allocation of employee hours
534.34.02	Dump - Garbage/Waste	153,267	190,500	(37,200)	153,300	Cost cutting measures
534.52.02	Gas & Oil	16,166	26,504	(10,300)	16,204	Correct allocation of gas by dept
534.53.01	Depreciation	12,518	20,327	(7,800)	12,527	Calculated amount
534.53.03	Administration Fee-Biscayne Park	50,000		50,000	50,000	Transfer of Overhead Cost
534.75.01	Lease/Purchase Interest	2,437	22,120	(19,600)	2,520	Calculated amount
FUND 301	CITY-SURTAX					
510.34.02	Contract Services	20,532		20,532	20,532	Kimley Horn & Audit
581.90.02	Transfer to Stormwater		84,590	(20,532)	64,058	

Village of Biscayne Park  
Budget Amendment (9/30/2008-2009)

FUND	GENERAL FUND REVENUES	FY 08-09 YEAR TO DATE 09/30/09	FY 08-09 ADOPTED BUDGET	FY 08-09 BUDGET CHANGE	FY 08-09 AMENDED BUDGET	EXPLANATION
OBJECT:	GENERAL FUND REVENUES					
FUND 105	POLICE FORFEITURE					
	REVENUE:					
	Fines and Forfeitures	122,961	53,569	60,600	114,169	HIDTA AIR, receipts
359.00.00	Rental Reimbursement	10,400		10,400	10,400	Actual reimbursement
361.02.00	Overtime Reimbursement	1,813		1,800	1,800	Actual reimbursement
361.20.00	Fund Balance/Carryover		41,150	(41,150)		
369.30.00	TOTAL REVENUES	135,174	94,719	31,650	126,369	
	Regular Salaries	44,123	35,750	8,850	44,600	Approved expenditures
521.12.01	Overtime	28,634	16,329	12,300	28,629	Approved expenditures
521.14.01	Retirement	15,900	10,784	5,000	15,784	Approved expenditures
521.22.01	Travel Conf & Meetings	4,067		4,100	4,100	Approved expenditures
521.40.01	Operating Supplies	1,329		1,400	1,400	Approved expenditures
521.52.01		94,053	62,863	31,650	94,513	
FUND 601	CAPITAL IMPROVEMENTS					
	REVENUE:					
334.10-00	Recreation Hardening	4,250		4,250	4,250	\$60,000 Hardening Grant
337.40-00	General Obligation Bond - PW Buili	26,869	356,000		356,000	\$356,000 GOB Grant
337.70-00	Miami Dade / Recreation (Safe Net	38,000		38,000	38,000	\$25,000 SNP & \$13,000 North Dade Medical
381.00.00	Transfer In General Fund	40,041		40,041	40,041	Capital contribution from general fund
	Transfer from Fund Balance	8,000		8,000	8,000	Carryover from prior year capital contribution
	Total Revenues	117,160	356,000	90,291	434,041	
590.66.02	Public Works Building	26,869	356,000		356,000	Commission approved exp
590.66-03	Fire Alarm System	10,138		10,138	10,138	Commission approved exp
590.66.04	Recreation Pavilion	56,156		56,156	56,156	Commission approved exp
590.66.05	Entryway Sign	19,747		19,747	19,747	Commission approved exp
590.66.06	Recreation Hardening	4,250		4,250	4,250	Commission approved exp
	Total Expenses	117,169	356,000	90,291	446,291	



## **TENTH ORDER OF BUSINESS**

**10A**



## MEMORANDUM

**TO:** Honorable Village Commission  
Kim Prenter, Village Clerk  
John J Hearn, Village Attorney

**FROM:** Ana M Garcia, Village Manager

**RE:** Authorization to allow Village Manager dollar match for SNP grant

**DATE:** January 6, 2010

---

**REQUEST:**

The Village of Biscayne Park hereby authorizes the Village Manager to utilize the Building Better Communities General Obligation Bond and Quality Neighborhood Improvement Program Funds to provide the dollar-per-dollar match for the grant received from the Safe Neighborhood Parks Program

**Budget impact:** Utilize General Funds as appropriated in the 2009/2010 Fiscal Year Budget as the DOLLAR -PER- DOLLAR MATCH for a grant - \$55,000 has been allocated in the general fund for this purpose .

**RECOMMENDATION:** Manager recommendation is to approve

**RESOLUTION NO. 2010-2**

**A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE CITY MANAGER TO UTILIZE GENERAL FUNDS AS APPROPRIATED IN THE 2009/2010 FISCAL YEAR BUDGET AS THE DOLLAR -PER- DOLLAR MATCH FOR A GRANT RECIEVED THROUGH THE SAFE NEIGHBORHOOD PARKS PROGRAM; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the citizens of Miami Dade County have authorized the issuance of approximately Six million Dollars (\$6,000,000.00) in Safe Neighborhood Parks Bond money for land acquisition and capital improvements of open public spaces, and

WHEREAS, the Village of Biscayne Park has been recommended to receive an award by the Safe Neighborhoods Parks Citizens' Oversight Committee, and

WHEREAS, in order to qualify for the award, the City will be required to provide a dollar-for-dollar match (\$55,000.00), and

WHEREAS, the Village intends to utilize the funds for Village Recreation Center and Park improvements , and

WHEREAS, it is being recommended that the City utilize funds received from the Safe Neighborhoods Parks program for this purpose **NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, THAT:**

**Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Resolution upon adoption hereof.

**Section 2.** The Village of Biscayne Park hereby authorizes the Village Manager to utilize the Building Better Communities General Obligation Bond and Quality Neighborhood Improvement Program Funds to provide the dollar-per-dollar match for the grant received from the Safe Neighborhood Parks Program.

**Section 3.** This resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED this \_\_\_\_12th\_\_\_\_ day of \_\_\_\_January\_\_\_\_, 2010.

**The foregoing Resolution upon being  
Put to a vote, the vote was as follows:**

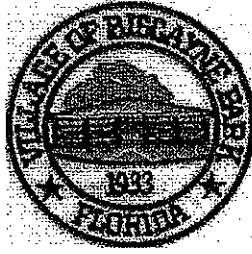
_____	Mayor Ross ____yes____
Roxanna Ross, Mayor	Vice Mayor Childress __yes____
	Commissioner Anderson ____yes____
Attest:	Commission Bernard ____yes____
	Commissioner Cooper ____yes____

\_\_\_\_\_  
Kim Prenter , Village Clerk

Approved as to form:

\_\_\_\_\_  
John J. Hearn, Village Attorney

**10B**



## MEMORANDUM

**TO:** Honorable Village Commission  
Kim Prenter, Village Clerk  
John J Hearn, Village Attorney

**FROM:** Ana M Garcia, Village Manager

**RE:** Support and Endorsement of the South Florida Parks Coalition

**DATE:** January 6, 2010

---

**REQUEST:**

South Florida Parks Coalition is dedicated to building a model park system that will promote a greener, healthier, and more livable South Florida community. It is created to foster a seamless, connected, and sustainable parks system for the South Florida community which will meet, collaborate, coordinate and share knowledge and professional expertise regarding park, recreation and conservation open spaces.

**Budget impact:** By supporting the Coalition, Village support complements the desire of the Village of Biscayne Park to maintain its parks, and public areas therefore maintain the property values of all Village of Biscayne park residents.

**RECOMMENDATION:** Manager recommendation is to approve

**Resolution NO. 2010-3**

**RESOLUTION SUPPORTING AND ENDORSING  
THE SOUTH FLORIDA PARKS COALITION  
CHARTER AND THE PRINCIPLES ON WHICH IT  
STANDS**

WHEREAS, parks, open spaces and preserves are vital to the quality of life of all residents of Miami Dade County; and

WHEREAS, the Village of Biscayne Park is committed to the fundamental and abiding values of equity, recreation opportunity and environmental stewardship; and

WHEREAS, the South Florida Parks Coalition is comprised of park and recreational professionals from all city, county and state and federal jurisdictions, and

WHEREAS the South Florida Parks Coalition is dedicated to building a model park system that will promote a greener, healthier, and more livable South Florida community; and

WHEREAS, The South Florida Park Coalition is created to foster a seamless, connected, and sustainable parks system for the South Florida community, and

WHEREAS, The South Florida Parks Coalition will meet, collaborate, coordinate and share knowledge and professional expertise regarding park, recreation and conservation open spaces; and

WHEREAS, we know that there is strength in unity.



NOW THEREFORE BE IT RESOLVED that the Village of Biscayne Park endorses the Charter of the South Florida Parks Coalition, attached and included by reference, and fully supports the principles on which it stands:

PASSED AND ADOPTED THIS 12<sup>TH</sup> day of January . 2010

The Foregoing Resolution upon  
Being put to a vote, the vote was  
as follows:

Mayor Ross \_\_\_\_ Yes \_\_\_\_  
Vice Mayor Childress \_\_\_\_ Yes \_\_\_\_  
Commissioner Anderson \_\_\_\_ Yes \_\_\_\_  
Commissioner Bernard \_\_\_\_ Yes \_\_\_\_  
Commissioner Cooper \_\_\_\_ Yes \_\_\_\_

\_\_\_\_\_  
Roxanna Ross, Mayor

Attest:

\_\_\_\_\_  
Kim Prenter , Clerk

Approved as to form:

\_\_\_\_\_  
John J. Hearn, Village Attorney

\_\_\_\_\_

## **SOUTH FLORIDA PARK COALITION**

**A COALITION OF CITY, COUNTY, STATE AND FEDERAL PARKS IN MIAMI-  
DADE COUNTY**

# **CHARTER**

### **Preamble:**

The South Florida Park Coalition is created to foster a seamless, connected, and sustainable parks system for the South Florida community. The Coalition will meet, collaborate, share knowledge and professional expertise regarding park, recreation and conservation open spaces.

Our work is rooted in the fundamental values of recreation opportunity and environmental stewardship. It is dedicated to building a model park system that will promote a greener, healthier, and more livable South Florida community.

We believe that a model park system consists of parks and public spaces, recreation facilities, greenways, blueways, great streets and conservation lands.

We believe that a sustainable, model Park System must be planned and created with an eye to its impact on the neighborhood, city, county and region as a whole. It must be effective, efficient, fair and balanced. It must work with other public and private agencies; and it must enhance the health, safety, happiness and well-being of all residents and visitors to South Florida, now and in the future.

We believe that a model park system is integral to social, environmental and economic sustainability; it must become a vital part of everyday human experience; it must be connected spiritually and physically; and it must provide accessibility for people of all means and abilities. The model Park System must raise the quality of life for the region and inspire generations of people to care for and contribute to their communities.

**Based on the beliefs of equity, access, beauty, seamlessness, sustainability and multiple benefits,**

**We assert that the Model Park System shall:**

- Ensure an accessible, diverse and balanced system of passive and active recreation opportunities that promote safety, security and healthy lifestyles.

- Ensure the preservation, protection and enhancement of ecological resources to sustain and preserve biodiversity and the environmental health of the region.
- Ensure the preservation, protection and enhancement of cultural resources to sustain landscapes and their historical and heritage features.
- Ensure that park, recreation and conservation open spaces guide the shape of urban form.
- Ensure that there is no net loss of park, recreation or conservation lands and mandate replacement of land of equal value, context and significance.
- Ensure community stewardship of park, recreation, and conservation open spaces by fostering educational and recreational programming, civic art, volunteerism and support of philanthropic and grassroots organizations.
- Ensure the continual enhancement of economic development and quality of life in the region by partnering and collaborating with the business community.
- Ensure the equitable distribution of park, recreation and conservation open spaces for all communities in the region.
- Ensure and support responsible growth to conserve environmental and cultural resources, promote economic investment, and support neighborhood stability, while reclaiming marginal and abandoned areas.
- Ensure the support and development of an interconnected framework of transportation alternatives such as transit, pedestrian, bicycle and waterway systems that link parks, recreation and conservation open spaces to each other and to communities.
- Ensure high standards of design excellence, innovation and beauty to support economic, social and environmental sustainability of the region.

**10C**



## MEMORANDUM

**TO:** Honorable Village Commission  
Kim Prenter, Village Clerk  
John J Hearn, Village Attorney

**FROM:** Ana M . Garcia , Village Manager

**RE:** Resolution 2010-04 FDACS Forest Health Initiative

**DATE:** January 5, 2010

---

The Village of Biscayne Park takes great pride in its trees and has been very proactive in the enhancement of its canopy by planting hundreds of trees. These trees need to be maintained to include pruning, lifting and trimming. Additionally, in the case of dead trees that may be dangerous and cause injury and put us in an unsafe and or liable situation, this grant allows the Village of Biscayne Park to also remove these trees. Many of our trees that have been planted after Hurricane Andrew have never been trimmed, thus a great need exist that can be fulfilled by this grant.

The Budgetary Impact, is savings from existing budget, that can be re directed for other projects.

Approval is recommended.

**ARRA Forest Health Improvement Initiative Grant Program**

**RESOLUTION 2010-04**

**A RESOLUTION BY THE VILLAGE OF BISCAYNE PARK FLORIDA TO ENTER INTO A  
GRANT MEMORANDUM OF AGREEMENT WITH THE STATE OF FLORIDA, DEPARTMENT  
OF AGRICULTURE AND CONSUMER SERVICES, DIVISION OF FORESTRY**

**WHEREAS**, trees are an important part of our community; and

**WHEREAS**, the Village of Biscayne Park desires to apply for a Forest Health Improvement Initiative Grant which would provide monies to improve the condition of the community's tree canopy; and

**WHEREAS**, the Village of Biscayne Park desires to apply for a Forest Health Improvement Initiative Grant which would provide monies to improve the condition of the community's tree canopy; and

**WHEREAS**, the Village of Biscayne Park wishes to enter into a Forest Health Improvement Initiative Grant Memorandum of Agreement between the City of Hometown, Florida and the Florida Department of Agriculture and Consumer Services;

**NOW, THEREFORE, BE IT RESOLVED** by the Commissioners of the Village of Biscayne Park, Florida:

Section 1. The City Council supports the improvement of the condition of the city's tree canopy.

Section 2. The City Council hereby authorizes the City Manager to enter into a Forest Health Improvement Initiative Grant Memorandum of Agreement between the City of Hometown, Florida and Florida Department of Agriculture and Consumer Services.

**INTRODUCED, PASSED AND ADOPTED THIS THE 12TH DAY OF January, 2010.**

BY: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVAL AS TO FORM:

\_\_\_\_\_  
City Attorney

**BID NUMBER: RFP/DF-09/10-47**

**OPENING DATE: FEBRUARY 12, 2010 @ 2:00 P.M.**

**REQUEST FOR PROPOSAL**

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES  
DIVISION OF FORESTRY**

**2009-11 FOREST HEALTH IMPROVEMENT INITIATIVE GRANT PROGRAM**

**SPECIAL TERMS, CONDITIONS AND SPECIFICATIONS**

**INTRODUCTION**

At the present time, Florida's home foreclosure rate is among the top five states in the country. This has resulted in significant reductions in all sectors of the construction and real estate industries in all parts of the state. Consequently, revenues to local governments have drastically fallen, causing them to reduce investments in the maintenance of their community forests. City planners report that they prefer not to invest in additional reforestation because they don't have the necessary resources to maintain the trees that they already have. The private sector companies who perform this work have also scaled back their operations because of decreased demand for their services, contributing to the current high unemployment rate.

In addition, a number of Florida communities currently have large populations of declining and over-mature trees in their parks and rights of way that need to either be maintained or removed and replaced. When a sufficient amount of resources are not invested in this maintenance, damage to life and property occurs. This situation causes citizens to perceive trees as a liability or a hazard, rather than as an asset that provides amenities to their local area. Communities also need to invest more resources in reforestation to promote species diversity and increase their tree canopy cover to a desirable level.

**PURPOSE**

Investments in reforestation will stimulate increased economic activity in the nursery, landscaping, and transportation sectors of the economy. Arborists and tree workers will benefit from funds that are made available for tree maintenance practices such as pruning and site amelioration. Communities all over Florida will benefit ecologically from the increase in canopy cover and improved health and vigor of existing trees. Projects will contribute to improved water and air quality, improved community aesthetics, and increased employment opportunities for the green industry.

The Florida Division of Forestry will utilize 2009 American Recovery and Reinvestment Act (ARRA) funding from the US Forest Service to conduct a competitive grant process inviting eligible participants to apply for funding to reforest public rights-of-ways, parks, public schools, and other natural areas, as well as provide opportunities for tree remediation work which include corrective tree pruning, hazard tree removal and rehabilitation of soil conditions for significant trees.

Cities, counties, educational institutions, Native American tribal entities, and non-profit groups throughout the state will be eligible to apply for these grants. Priority for funding will be given to communities that have the highest unemployment rates in the state of Florida, and to blighted neighborhoods or underserved rural population centers. These areas should see increased employment opportunity for commercial arborists, landscape contractors, nurserymen, consulting arborists, and landscape architects/designers as a result of this initiative.

Copies of the Forest Health Improvement Initiative Grant Program Request for Proposal may be obtained by contacting: Department of Agriculture and Consumer Services, Purchasing Office, Mayo Building, Room SB-8, Tallahassee, Florida, 32399-0800, (850) 617-7180. It can also be downloaded from the Division of Forestry website, [www.fl-dof.com](http://www.fl-dof.com).

## SCOPE

A total of \$1.4 million will be made available to potential grant recipients. Funding for this grant program is provided by the US Forest Service from the American Recovery and Reinvestment Act that was passed by the US Congress in February, 2009. Florida Statute (F.S.) 589.28 authorizes the Florida Department of Agriculture and Consumer Services (hereafter referred to as FDACS or Department) to cooperate with local governments to promote the planting and protection of trees to improve the beauty and livability of urban environments within the State of Florida.

## DEFINITIONS

For the purpose of this Request for Proposal (RFP):

1. "Applicant" means a local government, a Native- American Tribal Government, a legally organized nonprofit organization or an educational institution submitting a proposal for federal funds under this grant program.
2. "Proposal" means a Forest Health Improvement Initiative Grant Program Proposal Form and its required attachments and supporting documentation not to exceed a total of 30 one-sided pages, including maps and plans.
3. "Center Manager" or "District Manager" means the Division of Forestry administrative official, or his/her designee responsible for all forestry activities within a multi-county administrative unit, pursuant to Florida Statute 589.30.
4. "Chief Executive Officer" means the chief administrative employee of a local government, nonprofit organization or educational institution.
5. "Commissioner" means the Commissioner of Agriculture for the State of Florida.
6. "Department" or "FDACS" means the Florida Department of Agriculture and Consumer Services, an agency of the State of Florida.
7. "Grant Coordinator" means the Division of Forestry employee designated by the State Forester to coordinate implementation of the grant program.
8. "Grant Subcommittee" means the subcommittee assigned by the State Forester to score and rank the qualifying proposals.
9. "Local Government" means a county government, a municipality (an incorporated city, town, or village), a school board district or an independent special district.
10. "Nonprofit Organization" means an organization which has filed an application with the Secretary of State of Florida for nonprofit corporate status pursuant to Section 617, Florida Statutes, and has been issued a Federal Employer Identification Number by the Internal Revenue Service.
11. "RFP" means Request for Proposal.
12. "State Forester" means the Director of The Division of Forestry.
13. "Non-federal public property" means public property owned by state or local governments or Tribal governments.



**ELIGIBILITY REQUIREMENTS**

1. Qualified applicants are limited to legal nonprofit organizations, educational institutions, local city and county governments and Native-American Tribal Governments. All qualified applicants throughout the State of Florida are eligible to participate.
2. Grant requests may not exceed **\$24,000**. Maximum grant award to a single applicant is **\$24,000**. The minimum grant amount that may be requested is **\$2,000**.
3. Recipients will not be required to match the funds provided under this grant program, although it is hoped that the available funding will encourage them to initiate similar tree management activities above and beyond the scope of the grant.
4. Expenses associated with travel and per diem are **not** eligible.

**GRANT CATEGORIES**

There are two grant categories:

1. Reforestation
2. Tree Remediation and Site Amelioration

A maximum of 35% of total funds will be made available for Category 2 projects, and the remainder will be allocated for Category 1 projects.

**CATEGORY 1: REFORESTATION**

The purpose of this practice is to increase local tree canopy cover, enhance the environmental and health benefits that trees provide to the local community, and to stimulate local economic activity in sectors related to the growing, transportation, and installation of trees. Funds may only be used for purchase and planting of trees or palms and related expenses listed below. Purchase and planting of shrubs and ground covers is not eligible.

**Tree Planting Requirements**

1. Trees and palms planted with funds from this program must meet or exceed Florida Grade #1 as described in the *Florida Grades and Standards for Nursery Stock*, published by the Florida Division of Plant Industry.
2. Trees may not exceed a 4-inch caliper. Palms may not be taller than 16 feet, clear trunk.
3. Minimum tree size is 1 and 1/2 inch caliper, in at least a 15 gallon container, unless prior approval to plant smaller trees in natural areas is granted.
4. At least three tree species suitable for the site and objective must be planted. Native species are preferred, but some non-invasive introduced species may be included.
5. Up to **ten percent (10%)** of the grant award may be used for the purchase and/or installation of irrigation equipment or an irrigation system, or for supplemental watering during the 60 day grow-in period.
6. Trees listed on the Exotic Pest Plant Council's MOST RECENT list of Florida's Invasive Species (Category I or II) may not be planted as any part of this grant program; the list may be found on the internet at [www.fleppc.org](http://www.fleppc.org).

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7. Maximum allowable cost per tree or palm is **\$400.00**, including purchase, delivery, and installation. The total cost cannot exceed this amount.
8. Written approval is required (as part of the proposal) from the Florida Department of Transportation for planting and maintenance on any state right-of-way.
9. Eligible multi-stemmed tree species include only those listed on the Right Tree/Right Place posters produced by the Florida Urban Forestry Council.
10. A maximum of **\$12.00** per tree may be spent on planting materials during the 60 day grow-in period.
11. Up to **ten percent (10%)** of the grant award may be spent on site-preparation costs directly related to the tree planting.
12. Proposals must include: (a) detailed planting plan (site plan) which shows the location of the trees/palms, existing structures, and site limitations such as underground utilities and overhead wires, (b) location map, and (c) a minimum of three color photographs of the planting site.
13. A 60-day "grow-in period" is required prior to Certification of Acceptance by the Department and the processing of a final reimbursement. The proposal should state how the trees will be watered and cared for during the grow-in period.
14. All transportation and planting must be performed by contract vendors. **The grant will not pay for any in-house labor or in-house professional oversight.**
15. Up to **ten percent 10%** of grant funds may be used to hire an ISA certified arborist to oversee planting operations if the community does not have sufficient in-house expertise available.

#### **CATEGORY 2: TREE REMEDIATION**

The purpose of this practice is to improve the health of existing community trees, eliminate safety hazards associated with trees, and stimulate local economic activity in sectors related to tree care. The following practices are eligible for funding under this grant program:

1. Corrective Pruning - This will involve practices to improve tree health and enhance future structural stability. Grant recipients can use program funds to hire private vendors to prune trees according to ANSI-A300 standards, and then dispose of debris after pruning is completed. Trees must be located either on public rights-of way or in publicly owned parks and other natural areas.
2. Tree Removal - Trees located on either public rights-of way or in publicly owned parks and other natural areas are eligible. Grant recipients can use program funds to hire private vendors to take down qualifying trees and dispose of woody debris. Grant recipients will have to show evidence to an agency representative from the Division of Forestry in advance that each eligible tree contains defects that cannot be corrected by pruning and poses a potential safety hazard to persons and property in the immediate area. This could include either a written report from an ISA certified arborist or obvious visual defects. The maximum reimbursement amount per tree is \$1000, regardless of the actual total cost.
3. Site Amelioration - This will involve improving the site conditions of existing trees on public rights-of way or in publicly owned parks and other natural areas. Eligible practices include aeration of compacted soils using an air spade or similar device, enhancement of soil structure using amendments, and removal of any impediments that inhibit a trees' root growth or ability to absorb water and nutrients. Private vendors would have to provide these services. An agency representative from the Division of Forestry would have to certify in advance that each eligible tree is in a sufficiently visible public location and currently in an otherwise sufficiently healthy condition to where it could benefit from these treatments. A written report from an ISA certified arborist can be used as testimony of condition.

Grant applications for category II practices need to include the following information:

- a. A map of the area, showing the location of the trees to be treated.
- b. The grant narrative must describe the extent of the problem and the proposed treatment regimen, including timing. The latter should be consistent with standard practices as described in the American National Standards Institute (ANSI) ANSI A 300 Tree Care Standards manuals. Another source of technical information is the website <http://hort.ifas.ufl.edu/woody>. The narrative should also state how the recipient will supervise the project while in progress. It is preferable that an ISA certified arborist or a graduate forester from an accredited four year forestry program be involved in planning and implementing the practice.

### **SELECTION CRITERIA**

The Grant Coordinator shall review and determine the completeness of the proposals. The following criteria must be met before the grant proposal may be determined to be complete:

1. The proposal must contain all the requested information and be legible and understandable.
2. A resolution or letter approving the proposal and authorizing the Chief Executive Officer of the applicant to execute agreements and documents associated with the grant request must be submitted as part of the proposal.
3. A budget detailing all costs of the project must be submitted with the proposal.
4. Late proposals, email transmissions, and fax transmissions will not be accepted or considered. Unsigned proposals will be ruled ineligible.

### **PROPOSAL EVALUATION CRITERIA**

The Grant Subcommittee shall review and score all proposals which the Grant Coordinator has determined to be complete, based upon how well the proposal meets the purpose of the grant program. Once the applications are evaluated and scored according to the point system described below, they will then develop a prioritized list of applications recommended for approval by the Commissioner of Agriculture.

Scoring of proposals is based upon the following prioritized and weighted attributes. The maximum possible point score is **150 points**, including bonus points. A minimum score of **75 points**, including bonus points, is required for an application to be accepted. Funds will be allocated to the acceptable applications with the highest numerical scores in each of three (3) population regions of the state (see Appendix K). Each region shall receive approximately **\$465,000**, unless they do not have a sufficient number of accepted applications. In that case, funds will be awarded to accepted applications in the other regions. A maximum of 35% of total funds will be allocated to Category II practices.

- a. **Demonstrated Need - 50 points maximum**  
Highest score will be given to proposals that demonstrate an economic need for funds. Applications from counties with the highest current unemployment rates in their region will receive the higher scores. Within those counties, either smaller, rural communities or blighted and underserved neighborhoods in larger cities will be scored the highest in this category.
- b. **Previous U&CF Grants Received - 20 points maximum**  
Highest scores will be given to applicants who have not received Urban and Community Forestry grant funds within the past three years. Applicants will have five points deducted from their maximum score in this category for each grant approved in the past three years, including hurricane grants.

- c. **Cost Effectiveness - 15 points maximum**  
Highest score will be given to proposals that will clearly maximize results with the efficient use of grant dollars, clearly describe how funds will be expended, and adhere to the cost parameters listed in this RFP. Including written estimates will enhance this score.
  - d. **Well-Defined Goals and Objectives - 15 points maximum**  
Highest score will be given to proposals that clearly state goals and objectives that will expand/complement their existing U&CF program efforts.
  - e. **Technical Correctness - 15 points maximum**  
Highest score will be given to proposals which include competent project supervision, adherence to tree planting and other practice specifications, and knowledge of how to implement the practice they are proposing.
  - f. **Level of Community Involvement or Support - 10 points maximum**  
Highest score will be given to proposals that provide documented community support, involve partnerships with private industry, volunteer groups or other local governments, and encourage continued citizen involvement in the local urban forestry program. At least three letters of endorsement from the local community are recommended.
  - g. **Promotional Value - 5 points maximum**  
Highest score will be given to proposals which have a high potential for positive public relations, where the applicant indicates a strategy for publicizing the project.
  - h. **Completeness of Proposal - 5 points maximum**  
Highest score will be given to proposals which are complete, include all of the required attachments, and provide a detailed explanation of the proposal.
- In addition to the above the following will be considered for bonus scoring during the evaluation:(15 point maximum)
- i. **Tree City USA certification - 5 points**  
Indicates a community's commitment to sustaining their urban forestry program.
  - j. **Tree City Growth Award Recipient - 5 points**  
Community demonstrates a sustained commitment to its urban forestry program.
  - k. **Proposal specifies a Certified Arborist(s) or a graduate forester from an accredited four -year Bachelor of Science in Forestry program will be involved in project implementation - 5 points.**  
Indicates a community's commitment to the proper implementation of urban forestry practices.

#### **REJECTION OF PROPOSALS**

The Department reserves the right to recommend partial funding of proposals, the right to reject any or all proposals or waive minor irregularities when to do so would be in the best interest of the State of Florida, and to reject the proposal of a Proposer whom the Department determines is not in a position to perform the Contract. Minor irregularities are those which will not have a significant or adverse effect on overall competition, cost or performance.

#### **POSTING AND RECOMMENDED AWARDS**

Tabulations with recommended award(s) will be posted on or about the date indicated on herein for review by interested parties on the Florida Bid System at <http://www.myflorida.com>, click on Business, Doing Business with the State of Florida, Everything for Vendors and Customers, Vendor Bid System, Search Advertisements. Tabulations will remain posted for a period of seventy-two (72) hours. Failure to file a protest within the time

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prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Failure to file the proper bond at the time of filing the formal protest will result in denial of the protest.

Proposals that do not receive an award during the current grant cycle will be notified in writing with an explanation of why they received a lower score. At the same time, suggestions will be provided for ways they can improve their chances of being awarded a Grant in the future.

#### **LATE PROPOSALS**

Proposals received by the Department after the proposal opening time and date will be rejected as untimely and will not be opened. A late proposal notice will be sent to the Proposer after the posting of Award Notice with instructions for its return. Unclaimed late proposals will be destroyed after 45 days. Offers from vendors listed on the Department's posted Award Notice are the only offers received timely in accordance with the Department's proposal opening time and date.

#### **COST OF PREPARATION**

The Department is not liable for any costs incurred by a Proposer in response to this Request for Proposals including an optional oral presentation.

#### **FOREST HEALTH IMPROVEMENT INITIATIVE GRANT MEMORANDUM OF AGREEMENT , IF APPLICABLE)**

A grant under this program will not be awarded until a Grant Memorandum of Agreement has been fully executed between the Department and the Applicant.

1. The Grant Memorandum of Agreement shall detail the responsibilities of the applicant, a schedule and the terms of payment for the project (Attachment G).
2. The Maintenance Memorandum of Agreement (if applicable) shall detail the responsibilities for maintenance of any areas landscaped or improved by the proposed project.

#### **EXECUTION OF AGREEMENTS AND DOCUMENTS**

Upon notification of a Grant Award, the following shall take place:

1. It will be the responsibility of the applicant to insure that the Grant Memorandum of Agreement is fully executed within a period of sixty (60) days upon receipt. Failure to comply with this schedule may result in the grant offer being withdrawn.
2. Although it is the intent of the Department to expedite the grant award process as much as possible, applicants should be aware that they may not receive a fully-executed grant Memorandum of Agreement before April 1, 2010, and should schedule their projects accordingly. **No costs to be charged against the grant can be incurred before the MOA is executed.**
3. The Grant Memorandum of Agreement prepared between the Department and the Applicant shall stipulate:
  - a. What is to be accomplished under the grant.
  - b. The schedule and payment terms.
  - c. The schedule and content of progress reports.

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- d. Any penalties or actions that the Department will take in the event of noncompliance.
- e. The methods to be used by the Department to determine compliance with the terms of the grant agreement.
- f. Maintenance responsibilities for trees planted as part of the grant program.

#### **REVIEW OF PROJECTS IN PROGRESS AND UPON COMPLETION**

The Department shall ensure that the terms of the agreements executed under these guidelines are enforced.

An interim report showing the status of the project is due **July 1, 2010**, and shall be due quarterly until project completion.

The Grant Coordinator or his designee shall review the projects prior to final acceptance by the Department.

All projects and related expenditures must be completed by **July 31, 2011**. All reimbursement claims must be submitted by **September 30, 2011**.

#### **FUNDING SOURCE**

Grant awards are 100% funded by the federal government through the U.S. Forest Service. These funds are a part of the 2009 American Recovery and Reinvestment Act. For this grant program, the Florida Division of Forestry has allocated \$1,400,000 in funds received from the U.S. Forest Service for this grant program. Should additional funding become available, it will be added to this amount.

State funds will be allocated to each of three regions based on population (see Attachment L) as previously described. FDACS reserves the right to transfer surplus funds from one region of the state to another so as to fully utilize federal funding.

The State of Florida's performance and obligation to pay under this grant program is contingent upon funding by the U.S. Forest Service.

#### **ALLOWABLE COSTS**

The following Office of Management and Budget Circulars should be used as a reference for allowable costs for federally funded programs:

- A-21 Educational Institutions
- A-87 State and Local Governments
- A-122 Non-Profit Organizations

These circulars are available on line at <http://whitehouse.gov/omb/circulars/index.html> or you can request a copy from the Grant Coordinator.

Purchases by the grant recipient of \$2,500 to \$25,000 shall be carried out documenting two or more written quotations or written records of telephone quotations or informal bids to be opened upon receipt, whenever practical. Competitive sealed bidding is required for all purchases exceeding \$25,000. Justification must be provided for a sole source award or for an award to a vendor other than the vendor submitting the lowest bid or quote.

#### **METHOD OF REIMBURSEMENT**

Reimbursements can be made on a quarterly basis, if requested. **No advance payments shall be provided.** Applicants must submit a completed reimbursement summary sheet (**Attachment I**) to the Department with

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sufficient attachments to verify the claims made. These may include invoices, receipts, canceled checks, payroll log sheets, etc. FDACS will submit the claim for payment. No more than 75 percent of the grant amount will be paid to the Grantee prior to the submission of a completed Certification of Acceptance endorsed by the Department.

The final payment shall be made once the following documents are received:

- Certification of Acceptance endorsed by a Division of Forestry official.
- Final Reimbursement Summary Sheet with attached backup documents.
- Final Report - brief narrative summarizing project accomplishments.
- Recovery Act Questionnaire (**Attachment K**)- Completed and signed.
- News release to be submitted to a local publication crediting the US Forest Service for providing funding.
- Letter to local US Congressional representative acknowledging receipt of funds under this program and how they were used.

Upon receipt of these items in the Tallahassee State Office, the Department will submit the claim for payment. Payment shall be made in accordance with Section 215.422, Florida Statutes, which states the contractor's rights and the state agency's responsibility concerning interest penalties and time limits for payment of invoices (see Attachment A).

**ANY WORK PERFORMED ON THE PROJECT AND/OR ANY EXPENDITURES MADE PRIOR TO EXECUTION OF A GRANT AGREEMENT AND WRITTEN AUTHORIZATION FROM FDACS, DIVISION OF FORESTRY, IS INELIGIBLE FOR REIMBURSEMENT.**

The Federal Employer Identification Number (FEIN) will be the primary factor used to identify applicants. FDACS cannot process a request for reimbursement without the FEIN.

### **SPECIAL PROVISIONS**

#### **GRANT AGREEMENT AND CONDITIONS**

Terms and conditions within the Grant Agreement (Attachment G and Attachment H) and associated attachments shall apply.

FDACS will have the right to access any books, documents, papers, and records of the grant recipients which are directly pertinent to the Grant Agreement, for the purpose of making audit examinations, excerpts and transcriptions.

A quarterly interim progress report and a final project report will be required of all selected grant recipients. Additional progress reports may be required if grants are extended past the initial deadline. Failure to submit a required report or submission of an unsatisfactory report is sufficient grounds for termination of the grant agreement.

All products (brochures, signs, videos, reports, etc.) funded by the U&CF grant must display the following statement:

*"This funding for this project was provided by the American Recovery and Reinvestment Act of 2009. USDA is working to implement provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act) to put Americans back to work and rejuvenate the nation's economy. The Recovery Act provided USDA with nearly \$28 billion in funding, of that, \$1.15 billion has been allocated to the Forest Service for project work in forest restoration, hazardous fuels reduction, construction and maintenance of facilities, trails, and roads, green energy projects and grants to states, tribes, and private landowners."*

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**PUBLIC ENTITY CRIMES**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

**DISCRIMINATION**

An entity or affiliate who has been placed on the discriminatory vendor list may not submit a proposal on a contract to provide goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact any business with any public entity.

**EMPLOYMENT OF UNAUTHORIZED ALIENS**

Pursuant to Executive Order 96-236, effective October 1, 1996, the following standard provision shall apply to any contract awarded as a result of this Request for Proposal:

The Department shall consider the employment by any Contractor of unauthorized aliens a violation of section 274(a) of the immigration and Naturalization Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be caused for unilateral cancellation of this contract.

**AUDITS**

The Contractor shall maintain books, records and documents directly pertinent to the performance under this contract in accordance with generally accepted accounting principles consistently applied. FDACS, the State or their authorized representatives shall have access to such records for audit purposes during the term of the contract and for three years following the contract termination date or date of final payment, whichever is later. If an audit, litigation or other action involving the records is started before the end of the three year period, the records must be retained until all issues arising out of the action are resolved, or until the end of the three year period, whichever is later.

In accordance with Federal laws and regulations, the Contractor agrees to comply with audit requirements, as applicable, of the Office of Management and Budget (OMB) Circular A-133. Any contract resulting from a proposal developed for any division where federal funds are distributed, shall be in compliance with this circular.

**CERTIFICATION REGARDING LOBBYING AND DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS FOR EXPENDITURE OF FEDERAL FUNDS**

Any person submitting a response to this bid **MUST** execute the enclosed form DACS-01522, CERTIFICATION REGARDING LOBBYING AND DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS FOR EXPENDITURE OF FEDERAL FUNDS, and enclose it with his/her bid or proposal (see Attachment C). The certification for Lobbying is required by 7 CFR Part 3018 for expenditures \$100,000 and above. The certification for Debarment and Suspension and Other Responsibility Matters is required by 7 CFR Part 3017 for expenditures \$25,000 and above.



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**DRUG-FREE WORKPLACE**

Preference shall be given to the proposal certifying a drug-free workplace has been implemented in accordance with Section 287.082, Florida Statutes. Whenever two or more equal proposals are received by the State or by any political subdivision for the procurement of commodities or contractual services, a proposal received from a business that certified that it has implemented a drug-free workplace shall be given preference in the award process. Established procedures for processing a tie proposal will be followed if none of the tied vendors have a drug-free workplace program. **(Attachment C, Certification Regarding Lobbying; Debarment; Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements must be completed and returned as part of this contract.)**

**CERTIFICATION OF NO CONFLICT OF INTEREST**

Any person submitting a bid or proposal in response to this Request for Proposal must execute the enclosed Conflict of Interest Statement **(see Attachment B)** and enclose it with his/her bid or proposal. Award will not be made by the Department until the certification is signed by the Proposer and submitted to the Department.

**NON-DISCRIMINATION STATEMENT**

In accordance with Federal law and U.S. Department of Agriculture (USDA) policy, this Contractor is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202)720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

**INTERPRETATIONS/DISPUTES**

Any questions concerning conditions and specifications shall be directed in writing to the Purchasing Office for receipt no later than 10 days prior to the bid opening. No interpretation shall be considered binding unless provided in writing by the Department's Purchasing Director in response to requests in full compliance with this provision. Any person who is adversely affected by the agency's decision or intended decision shall file with the agency a Notice of Protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provision governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights or further negotiation, or modifying or amending any contract, the Notice of Protest shall be filed in writing within 72 hours after the posting of the solicitation. The formal written protest shall state with particularity the facts and law upon which the protest is filed.

**AWARD OF IDENTICAL (TIE) PROPOSALS**

In the event that identical proposals are received, preference shall be given to the proposal certifying a drug-free workplace has been implemented in accordance with Section 287.087, F.S. Award shall be determined by using the number of valid vendor complaints on file or by lot; except that the proposal which related to commodities manufactured within this State shall be given preference and the proposal of any foreign manufacturer with a factory in the State employing over 200 employees working in the State shall have preference over the proposal of any other foreign manufacturer.

**QUESTIONS**

Questions concerning the technical aspects of the proposal or the Applicants' Workshops should be directed to the nearest FDACS, Division of Forestry office (see Attachment M, List of Division of Forestry District/Center Contacts), or to:

**BID NUMBER: RFP/DF-09/10-47**

**OPENING DATE: FEBRUARY 12, 2010 @ 2:00 P.M.**

Division of Forestry  
Florida Department of Agriculture and Consumer Services  
3125 Conner Boulevard, Suite R-3  
Tallahassee, FL 32399-1650  
Telephone (850) 921-0300

Questions regarding procedures for submittal of proposals should be submitted to:

Christie Hutchinson, Purchasing Director  
Division of Administration  
Department of Agriculture and Consumer Services  
Mayo Building, Room SB-8  
Tallahassee, FL 32399-0800  
Telephone (850) 617-7181

No negotiations, decisions, or actions shall be initiated or executed by the applicant as a result of any discussions with any FDACS employee. Only those communications which are in writing from the Department's Purchasing Office may be considered as a duly authorized expression on behalf of the Department. Only communications from the applicant which are signed and in writing will be recognized by the FDACS as duly authorized expressions on behalf of the applicant.

#### **SCHEDULE OF EVENTS**

December 7, 2009	Notification of Availability of Request for Proposal mailed to all potential applicants. RFP available for download at <a href="http://www.myflorida.com">www.myflorida.com</a> and <a href="http://www.fl-dof.com">www.fl-dof.com</a> .
January, 2010	Informational workshops at various locations throughout the state.
February 12, 2010 @ 2:00 P.M.	Sealed proposals in response to RFP must be received by FDACS Purchasing office.
March 15, 2010	Evaluation of proposals.
March 31, 2010	Posting of Award on the Florida Bid System at <a href="http://myflorida.com">http://myflorida.com</a> , click on Business, Doing Business with the State of Florida, Everything for Vendors and Customers, Vendor Bid System, Search Advertisements. Tabulations will remain posted for a period of seventy-two (72) hours. Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. Failure to file the proper bond at the time of filing the formal protest will result in denial of the protest.
July, 2010	First quarterly Interim report due.
September, 2011	All closeout documentation submitted no later than September 30, 2011.

**BID NUMBER: RFP/DF-09/10-47**

**OPENING DATE: FEBRUARY 12, 2010 @ 2:00 P.M.**

**ATTACHMENT A**

**STATE OF FLORIDA**

**DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**NOTIFICATION OF VENDOR OMBUDSMAN'S NAME  
AND TELEPHONE NUMBER**

Vendors providing goods and services to an agency should be aware of the following time frames. Upon receipt, an agency has five (5) working days to inspect and approve the goods and service, unless the bid specifications, purchase order or contract specifies otherwise. An agency has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

If a payment is not available within 40 days, a separate interest penalty of .02740 percent per day will be due and payable, in addition to the invoice amount, to the vendor. Payments to health care providers for hospital, medical or other health care services, shall be made not more than 35 days from the date eligibility for payment is determined, and the daily interest rate is .03333 percent. Interest penalties of less than one (1) dollar will not be enforced unless the vendor requests payment. Invoices which have to be returned to a vendor because of vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the agency.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payments(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Consumer Hotline at 1-800-342-2762.

**10D**



## MEMORANDUM

**TO:** Honorable Village Commission  
Ana M Garcia, Village Manager  
Kim Prenter, Village Clerk  
John J Hearn, Village Attorney

**FROM:** Steve Bernard, Commissioner & Roxanna Ross, Mayor

**RE:** Public comment on first reading of ordinance

**DATE:** January 6, 2010

---

**REQUEST:**

By allowing the public an opportunity to comment on proposed ordinances at the time of first reading before the ordinance should encourage resident participation and to be in the best interests of the citizens of Biscayne Park.

**Budget impact:** Positive impact on budget by allowing public comment the Commission can focus on the needs and desires of the community rather than spending additional resources and energy on issues that are deemed less desirable by community standards.

**RECOMMENDATION:** Manager recommendation is to approve

1  
2 **RESOLUTION NO. 2010-6**  
3

4 **A RESOLUTION OF THE VILLAGE COMMISSION OF THE**  
5 **VILLAGE OF BISCAYNE PARK, FLORIDA, ESTABLISHING**  
6 **A PROCEDURE FOR THE PUBLIC TO COMMENT ON**  
7 **PROPOSED ORDINANCES BEFORE THE VILLAGE**  
8 **COMMISSION; PROVIDING FOR AN EFFECTIVE DATE**

9  
10 WHEREAS, the Village Commission of the Village of Biscayne Park has expressed an  
11 interest in allowing the public an opportunity to comment on proposed ordinances at the time of  
12 first reading before the Commission; and

13 WHEREAS, the Village Commission finds that allowing the public an opportunity to  
14 comment on proposed ordinances should encourage resident participation; and

15 WHEREAS, the Village Commission finds it to be in the best interests of the citizens of  
16 Biscayne Park to allow the public to comment at the time of first reading of proposed ordinances;

17 **BE IT RESOLVED BY THE COMMISISON OF THE VILLAGE OF BISCAYNE**  
18 **PARK, FLORIDA, THAT:**

19 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being  
20 true and correct and hereby made a specific part of this Resolution upon adoption hereof.

21 **Section 2.** The public is hereby afforded the opportunity to comment on proposed  
22 ordinances at first reading in addition to public hearings, which shall be held at second reading.

23 **Section 3.** This Resolution shall become effective upon adoption.  
24

25 PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

26 **The foregoing resolution upon being**  
27 **Put to a vote, the vote was as follows:**  
28

29 \_\_\_\_\_  
30 Roxanna Ross, Mayor

Mayor Ross \_\_\_\_\_  
Vice Mayor Childress \_\_\_\_\_  
Commissioner Bernard \_\_\_\_\_  
Commission Cooper \_\_\_\_\_  
Commissioner Anderson \_\_\_\_\_

31  
32 Attest:  
33  
34

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5  
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7

---

Village Clerk

Approved as to form:

---

John J. Hearn, Village Attorney

## **ELEVENTH ORDER OF BUSINESS**



**11A**



## MEMORANDUM

**TO:** Honorable Village Commission  
Kim Prenter, Village Clerk  
John J Hearn, Village Attorney

**FROM:** Ana M . Garcia , Village Manager

**RE:** Report on ARRA grant

**DATE:** January 5, 2010

---

**REQUEST:** From the minutes of the December meeting, the direction from Commission on a 3-2 vote was to see if the scope of work could be changed, and to look at enhancing the transit stops.

**BACKGROUND AND ANALYSIS:** Celestine Maple at Miami Dade County Transit was contacted and asked about options for changing the original scope as presented in the grant proposal. Manager Garcia took the original scope as written by Commissioner Cooper, and added benches, garbage bins and a lighting component and informational and or signage components.

**FISCAL/BUDGETARY IMPACT:** Kimley Horn Has already billed us \$2524.52 for their consulting services. Total amount of grant is \$32,896 so we have spent \$2524.52, therefore the Grant balance as it stands now is \$30,371.48. Additionally, Manager Garcia has requested quotes for Benches, garbage bins, information kiosk and bike racks to include cost, freight and installation. TBS upon receipt of quotes

### **RECOMMENDATION:**

The commission now has the opportunity to discuss various options and present different plans to the residents for a more favorable community enhancement .

**village clerk**

---

**From:** Ana M. Garcia [villagemanager@biscayneparkfl.gov]  
**Sent:** Thursday, December 17, 2009 2:52 PM  
**To:** 'Maple, Celestine (MDT)'; 'Owens, Debra D. (MDT)'  
**Cc:** attyhearn@aol.com; villageclerk@biscayneparkfl.gov  
**Subject:** RE:

Celestine, Debra, thanks again for taking the time to assist us thru the ARRA Grant process. Celestine, per our conversation today with our attorney the Village of Biscayne Park requests the following additions in regards to the ARRA Grant

Add backless benches, trash bins, and lighting at our transit stops. The details will be ironed out at the January 12<sup>th</sup> Commission meeting. The direction from The Commission could be to add additional dollars to the project and or ensure that our project does not exceed the grant dollars per the ARRA Grant. In any case, I will be contacting you January the 13<sup>th</sup> to meet and present to you our Inter-local agreement

Please contact me at (305-972-0872) if there is anything else you may need from the Village of Biscayne Park Thank you.

Respectfully,  
Ana M. Garcia  
Village Manager.

---

**From:** Maple, Celestine (MDT) [mailto:mapl@miamidade.gov]  
**Sent:** Tuesday, December 15, 2009 6:40 PM  
**To:** agarcia@biscayneparkfl.gov  
**Subject:**

Per our conversation. Call or email any time.

No virus found in this incoming message.  
Checked by AVG - www.avg.com  
Version: 9.0.716 / Virus Database: 270.14.110/2568 - Release Date: 12/16/09 03:02:00

12/17/2009

**Interlocal Agreement Between  
Miami-Dade Transit Agency and the Village of Biscayne Park  
For Federal Funding Pass-Through Arrangements with the American Recovery  
and Reinvestment Act (ARRA) of 2009 Federal Transit (FTA 5307) for the Village to  
Construct a Pedestrian and Bicycle Walkway, Bike racks, Signage and Parking  
Spaces**

This is an Interlocal Agreement, made and entered into by and between Miami-Dade Transit, a department of Miami-Dade County, a political subdivision of the state of Florida, hereinafter referred to as "the County", and the Village of Biscayne Park, a municipal corporation of the state of Florida, hereinafter referred to as "the Village".

WITNESSETH:

WHEREAS, Miami-Dade Transit, an Urbanized Area Formula Program grantee agrees to pass through Federal Transit Administration (FTA) 5307 the American Recovery and Reinvestment Act (ARRA) funding for the Village of Biscayne Park, a designated FTA funding recipient,

WHEREAS, the Village will provide the citizens of Village of Biscayne Park with constructing a pedestrian and bicycle walkway, bike racks, signage and parking spaces, directly or through a General contractor, which will meet the local needs; and

NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the County and the Village agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

- 1.1 "ADA" shall mean the Americans with Disabilities Act of 1990, as amended.
- 1.2 The American Recovery and Reinvestment Act (ARRA).
- 1.3 "Contractor" shall mean any entity, public or private providing public circulator services as described in this Agreement under contract to the Village.
- 1.4 "The County" shall include Miami-Dade County, the Miami-Dade Transit, the Miami-Dade Consumer Services Department, and authorized representatives thereof.
- 1.5 "The Village" shall mean Village of Biscayne Park and authorized representatives thereof.
- 1.6 "FDOT" shall mean the Florida Department of Transportation and authorized representative thereof.
- 1.7 "MDT" shall mean the Miami-Dade Transit and authorized representatives thereof.
- 1.8 "USDOT" shall refer to the U.S. Department of Transportation, its rules and regulations, and representatives thereof.
- 1.9 "FTA" shall mean the Federal Transit Administration, its rules and regulations, and representatives thereof.
- 1.10 "CSD" shall mean the Consumer Services Department of Miami-Dade County and authorized representatives thereof.
- 1.11 "PTRD" shall refer to the Passenger Transportation Regulatory Division of CSD.
- 1.12 "Federal Reporting Requirements" shall mean those requirements referenced in 49 CFR Section 5335(a), as may be amended from time to time, and found in the National Transit Database Reporting Manual published by the FTA.
- 1.13 "STS", Special Transportation Service, is the component of the conventional transit system designed to provide comparable circulator service to disabled individuals as mandated in the ADA.

## ARTICLE 2

### GENERAL REQUIREMENTS

- 2.1 Compliance with Applicable Laws and Regulations. The Village and its contractors, if any, shall comply with all existing and future laws, statutes, ordinances, codes, rules, regulations, and procedural requirements, whether federal, state, or local, which are applicable to, or in any manner affect, the provision of constructing a pedestrian walk /Greenway Linking. The Village shall be responsible for obtaining copies of the appropriate laws, regulations, ordinances, and documents and complying therewith.
- 2.2 Compliance with ADA. The Village's constructing a pedestrian walk/Greenway Linking services shall comply with all applicable requirements of the ADA. The Village and the County recognize their joint obligation to provide STS in the area served by the Village's service. In fulfillment of the Village's obligation, the Village hereby contracts with the County to provide STS service for trips which have both their origin and destination within the Village service area, as the County shall continue to provide such trips as part of its STS service at no cost to the Village. To the extent that any terms in this Agreement are in conflict with the ADA, the requirements of the ADA shall control.
- 2.3 Compliance with Federal Civil Rights Requirements. The Village, shall comply with the Federal Civil Rights requirements as attached, which may be modified from time to time by, the Federal government herein (See Attachment A).
- 2.4 Compliance with the United States Department of Labor. The Village, shall to the extent applicable comply with the Labor Protective Agreements as attached, which may be modified from time to time by, the Federal government herein (See Attachment B).
- 2.5 Compliance with Procurement Requirements. Miami-Dade County shall receive and review all proposals in accordance with federal and state procurement requirements, as may be amended from time to time. Miami-Dade County's Department of Procurement Management will forward a recommendation of contract award to the governing body of the applicable municipalities.
- 2.6 County's Right to Submit Proposals and Bids. The County shall be given the opportunity to bid upon any Requests for Proposals, Requests for Qualifications, or Requests for Bids which the Village shall issue regarding the provision of transportation service and shall be considered, along with private contractors, for provision of services to be provided by the Village pursuant to this Agreement.
- 2.7 Drug-free Workplace and Testing. In accordance with the Code of Miami-Dade County, the Village shall certify that it will have a drug-free workplace program. Further, the Village shall require pre-employment drug testing and other periodic drug testing for all persons holding safety-sensitive positions, as defined by USDOT, related to transit operation. Effective upon execution of the Agreement, the Village shall require that its employees or contractor, if applicable, comply with all applicable requirements of the USDOT regulations for drug and alcohol testing. To the extent that any terms in this Agreement are inconsistent with the USDOT regulation, the requirements of the USDOT shall control.

- 2.8 Village Representative. The Village shall designate individual(s) to act as liaison to the County and notify the County thereof. The Village shall promptly notify the County of any changes.
- 2.9 County Representative. The County shall designate individual(s) to act as liaison to the Village and notify the Village thereof. The County shall promptly notify the Village of any changes.
- 2.10 Amendments or modifications. Unless provided otherwise elsewhere in this Agreement, amendments and modifications to this Agreement must be in writing and shall require the signatures of the County Mayor and the Village Manager, or his/her designees, subject to authorization by their respective Boards. Notwithstanding the foregoing, amendments to this Agreement regarding alignments, schedules, and fares, as described in Section 2-150 (c) of the Miami-Dade County Code, may be approved by the County Manager and the Mayor of the Village of Biscayne Park, or their designees.

### ARTICLE 3

#### VILLAGE OF BISCAYNE PARK ENHANCEMENT SERVICES

- 3.1 Use of Logo. FTA has logo uniquely identifying ARRA projects. Such logo shall at all times be displayed on the exterior of the pedestrian and bicycle walkway, bike racks, signage and parking spaces projects pursuant to this Agreement. The County shall allow the display of the logo on the County's bus stop signs at all stop common to the Village and the County bus routes. The Village shall be responsible for placing the logo on the pertinent signs where space is available for such logos to be placed.

### ARTICLE 4

#### RECORDS AND REPORTS

- 4.1 Reporting Requirements. The Village shall collect or assure the collection of all information required for Federal and State reporting purposes, and shall provide collected and compiled information to the County no less often than monthly/quarterly as required by the County, State or FTA. The FTA through Miami-Dade County requires quarterly Financial Status Reports (FSR), Milestones, and Ridership Reports. The Village shall also report monthly ridership performance data.
- 4.2 Additional Information. The Village shall provide additional information about the Village constructing a pedestrian walk/Greenway Linking operations as requested by the County within thirty (30) days, unless a different time period is agreed upon, in writing, by the Village Manager and the County Mayor or his/her designee.

- 4.3 Administrative Fees. The Village shall pay the County a 5% fee of the FTA FY 2009 award of \$32,896.09 totaling \$1,644.80 for grant administration, finance, project management, and performance reporting. The net amount to the Village is \$31,251.29. The County shall be entitled to an administrative fee of 5% for any and all future FTA 5307 grants awarded to the Village for which the County provides grant application, grant administration, finance, project management and performance reporting services.
- 4.4 National Transportation Database (Section 15) Reporting. Timely Annual Reporting Statistics as required by the Federal Transit Administration (FTA), National Transit Database, as defined in the annual FTA National Transit Database Reporting Manual and FTA Circular 2710.2A, "Sampling Procedures for Obtaining Demand Responsive Bus System Operating Data" which may be amended from time to time by the FTA (Formerly known as Section 15 Reporting). Supporting documentation shall be submitted to the County if requested in writing. Annual audit statement will be required and records shall be maintained for no less than five (5) years for FTA triennial review.
- 4.5 Accidents and Incidents. In addition to emergency and police notifications, the Village shall be responsible for ensuring that all accidents and incidents are promptly reported to the County and subsequently that adequate and appropriate documentation of investigation, using National Safety Council definitions, be furnished to the County within three (3) working days. Initial notification of accidents or incidents shall be reported on a form approved by the County within 24 hours of occurrence. Any accident involving major damage, serious personal injury or loss of life shall be reported to the County within 1 hour of occurrence. Records shall be kept for at least three (3) years for each accident a vehicle is involved in, including the repair work required to return the vehicle to service. The Village must also provide to the Miami-Dade County Consumer Services Department (CSD); Passenger Transportation Regulatory Division (PTRD) one (1) copy of each accident report within 72 hours of such accident. The Village must also furnish the County all accident and incident data as required for the FTA National Transit Database (NTD), as defined in the FTA NTD Safety and Security Reporting Manual, including the Major Incident Report (within 30 days of occurrence) and the Non-Major Summary Reports (monthly, before end of month following report month).

## ARTICLE 5

### INSURANCE

The parties hereto acknowledge that the Village is self-insured governmental entity subject to the limitations of Section 768.28, F.S. The Village shall institute and maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provision of Section 768.28, F.S.



## **ARTICLE 6**

### **IDEMNIFICATION**

- 6.1 The Village shall, to the extent permitted by law at all times hereafter, indemnify and hold harmless the County, and its officers, agents, employees and instrumentalities from any and all liability, claims, losses, and causes of action, including attorneys' fees and costs of defense which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kinds or nature arising out of, or relating to or resulting from the negligence of the Village and/or its officers, employees, agents or instrumentalities, during the term of this Agreement. The Village shall pay all claims and losses in connections therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and reasonable attorneys' fees which may issue thereon. Nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County, its officers, employees, agents or instrumentalities or any other related third party. This paragraph is subject to the limitations of Section 768.28, F.S.
- 6.2 The County shall, to the extent permitted by law at all times hereafter, indemnify and hold harmless the Village, and its officers, agents, employees and instrumentalities from any and all liability, claims, losses, and causes of action, including attorneys' fees and costs of defense which the Village or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes, of actions or proceedings of any kind or nature arising out of, or relating to or resulting from the negligence of the County and/or its officers, employees, agents or instrumentalities, during the term of this agreement. The County shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Village, where applicable, including appellate proceedings, and shall pay all costs, judgments and reasonable attorneys fees which may issue thereon. Nothing herein shall be deemed to indemnify the Village from any liability or claim arising out of the negligent performance or failure of performance of the Village, its officers, employees, agents or instrumentalities or any other related third party. This paragraph is subject to the limitations of Section 768.28, F.S.

## ARTICLE 7

### FINANCIAL ASSISTANCE

- 7.1 Grant Matching Funds. There are no matching funds required for this American Recovery and Reinvestment Act (ARRA) FTA program.
- 7.2 Bus Shelters and Benches. The Village shall, at its sole option, provide, install, and maintain bus passenger shelters, benches and other bus stop furnishings, at bus stops along the Village's bus shelters service routes where the Village, or its contractor, feels that there is a need for such furnishings.
- 7.3 Bus Stops and Bus Bays or Pull-outs. The Village shall, at its sole option, provide, install, and maintain bus stop sites, including bus bays or pull-outs at stops along the Village's bus shelters service routes, provided that any proposed bus bays or pull-outs and any proposed modifications or reconfigurations to existing bus bays or pull-outs shall be first reviewed and approved by the County or State, as appropriate.
- 7.4 Comparable Agreements. In the event that the County enters into an Interlocal Agreement with any other municipality for bus services, which are comparable to the services provided herein, but upon more favorable terms for the municipality than the terms provided herein, County agrees to amend this Agreement, if requested by the Village, to provide substantially equivalent favorable terms to the Village as those provided in such other County/Municipal Interlocal Agreements.
- 7.5 Financial Obligation. To the extent the FTA deducts, withholds, or deobligates from this or any other Federal grant as a result of any act or omission on the part of the Municipality, Miami Dade County shall be entitled to deduct, withhold, or invoice the Municipality from this or any other agreement between the parties in the same amount as has been deducted, withheld or deobligated from Miami Dade County.

## ARTICLE 8

### TERMS, MODIFICATIONS AND MISCELLANEOUS PROVISIONS

- 8.1 Term of Agreement. This Agreement shall commence upon approval of the Board of County Commissioners and the Council of Village of Biscayne Park and the execution by the County Mayor or his/her designee and authorized Village Manager.
- 8.2 Renegotiation or Modification. Any substantive changes in the level of service to be provided by the Village as set forth herein shall only be implemented after the County and the Village has entered into a written agreement describing the changed services and the provisions of the County Code have been exercised.

- 8.3 Title VI and VII Civil Rights Act of 1964. The Village and its Contractors shall not discriminate against any person because of race, color, sex religious background, ancestry or national origin in the performance of the Agreement.
- 8.4 Termination for Cause. This Agreement may be terminated for cause by either party upon no less than thirty (30) days written notice to the other party, except when constructing a pedestrian walk/Greenway Linking operations are in violation of health and/or safety-related provisions of state statutes or the Code of Miami-Dade County, in which case termination shall be as determined by the County Mayor. Said notice shall be delivered by verified facsimile transmission or certified mail, return receipt requested. The noticed party shall have the opportunity to cure any stated cause for termination within a reasonable notice period, in which case the terminating party may cancel the termination notice using the same means by which the notice of termination delivered.
- 8.5 Termination without Cause. The County or the Village may terminate this Agreement without cause upon no less than sixty (60) days written notice to the other party. If the County or the Village terminates this Agreement with or without cause, the Village agrees to reimburse the County on a prorated basis for financial assistance it has received for the year.
- 8.6 Notices. All notices and other communications required to be remitted pursuant to this Agreement to either party hereto shall be in writing and shall be delivered by verified facsimile transmission or certified mail, return receipt requested, to the parties at the address indicated below:

FOR MIAMI-DADE COUNTY:  
Miami-Dade Transit Agency  
701 N.W. First Court, Suite 1700  
Miami, FL 33136

Attention: Director, Miami-Dade Transit  
Fax: 786.469.5580

FOR VILLAGE OF BISCAYNE PARK:

Village of Biscayne Park

Attention:  
Frank Spence

- 8.7 Name of Payee. The name of the official payee to whom the County shall issue checks shall be Village of Biscayne Park.
- 8.8 Complete and Binding Agreement. This writing embodies the full and complete Agreement of the parties. No other terms, conditions or modifications shall be binding upon the parties unless in writing and signed by the parties.
- 8.9 Execution. This document shall be executed in four (4) counterparts, each of which shall be deemed an original.
- 8.10 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the respective dates under each signature:

**ATTEST:**

**FOR THE COUNTY:**

Miami-Dade County,  
A political subdivision of the State of Florida

County Clerk

By its Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
County Mayor

Date Executed: \_\_\_\_\_

Approved as to Form and Legal Sufficiency

By: \_\_\_\_\_  
Assistant County Attorney

**ATTEST:**

**FOR THE VILLAGE:**

Village of Biscayne Park  
A political subdivision of the State of  
Florida

By: \_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
Village Manager

Date Executed: \_\_\_\_\_

Approved as to Form and Legal Sufficiency

By: \_\_\_\_\_  
Village Attorney

STATE OF FLORIDA            )  
                                      ) SS:  
COUNTY OF MIAMI-DADE    )

I, HARVEY RUVIN, Clerk of the Circuit and County Courts, in and for Miami-Dade County, Florida, and Ex-Officio Clerk of the Board of County Commissioners of said county, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Resolution No. R- , adopted by the said Board of County Commissioners at its meeting held on , as appears of record.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 29th day of October, A.D., 2008.

HARVEY RUVIN, Clerk  
Board of County Commissioners  
Miami-Dade County, Florida

By: \_\_\_\_\_  
Deputy Clerk

Board of County Commissioners  
Miami-Dade County, Florida

**11B/C**

Renewal or New Member Needed  
Info Needed

## **ZONING BOARD**

<b><u>Commissioner</u></b>	<b><u>Board Member</u></b>	<b><u>Unknown Commissioner</u></b>
Anderson	Elizabeth Hornbuckle	Gage Hartung
Bernard		
Doc	Andrew Olis	Mario Rumiano
Hornbuckle		
Mallette	Fred Jonas	Doug Tannehill
Alternate		Peter Bockweg
Alternate		

## **CODE ENFORCEMENT**

<b><u>Commissioner</u></b>	<b><u>Board Member</u></b>	<b><u>Unknown Commissioner</u></b>
Anderson	Harvey Bilt	Al Childress, Chair
Bernard		Lilly Harper, Vice Chair
Doc		James Reeder
Hornbuckle		Dale Blanton
Mallette		
Alternate		

## **PARK & PARKWAYS**

page 26, <http://www.biscayneparkfl.gov>

<b><u>Commissioner</u></b>	<b><u>Board Member</u></b>
Anderson	Dan Keys, Chair
Bernard	Bryan Cooper
Doc	Barbara Kuhl
Hornbuckle	Lynn Fisher
Mallette	Jane Ainsley
Alternate	Barbara Kiers

## **CODE REVIEW**

<b><u>Commissioner</u></b>	<b><u>Board Member</u></b>	<b><u>Unknown Commissioner</u></b>
Anderson		Dan Keys
Bernard		Lisa Peterson
Doc		Chuck Ross
Hornbuckle		Jud Hamelburg
Mallette		Maria Camara
No Alternate		

Al Childress, Chair	from code enforcement
Harvey Bilt	from code enforcement
Dale Blanton	from code enforcement
Lilly Harper	from code enforcement
Gage Hartung	from Zoning
Fred Jonas	from Zoning
Andrew Olis	from Zoning
Mario Rumiano	from Zoning, resigned 8/25/08
Janey Anderson	Secretary

## **Pathways**

<b><u>Commissioner</u></b>	<b><u>Board Member</u></b>
Anderson	Karen Cohen
Bernard	Victor Romano
Doc	Chuck Ross
Hornbuckle	John Ise
Mallette	Gary Kuhl, Chair
Anderson	Dan Keys (P&P)
Bernard	Bryan Cooper (P&P)
Doc	Barbara Kuhl (P&P)
Hornbuckle	Lynn Fisher (P&P)
Mallette	Jane Ainsley (P&P)
Alternate	Barbara Kiers (P&P)

## **REC CENTER**

<http://www.biscayneparkfl.gov/index>.

<b><u>Commissioner</u></b>	<b><u>Board Member</u></b>
Anderson	Rox Ross, Chair
Bernard	Mary Ann Duva (resigned this)
Doc	James Murphy
Hornbuckle	Ron Gwynn
Mallette	Jack Mallette
Alternate	Jane Anderson

## **ECOLOGY (Hasn't met yet)**

page 59, <http://www.biscayneparkfl.gov>

<b><u>Commissioner</u></b>	<b><u>Board Member</u></b>
Anderson	Victor Romano
Bernard	Matt Davis
Doc	Art Pyle
Hornbuckle	Colleen Shinn
Mallette	Karen Cohen

## **BP Foundation**

<b><u>Commissioner</u></b>
Anderson
Bernard
Doc
Hornbuckle
Mallette

### ARTICLE III. COMMISSIONS, BOARDS AND COMMITTEES\*

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\*Cross references: Planning board appointed, § 12-16.

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#### Sec. 2-31. Board of parks and parkways.

(a) Board created. The board of parks and parkways shall consist of five (5) members appointed by each member of the commission for staggered three-year terms. Members shall be qualified electors of the village. Upon the expiration of a board member's term, the village commission member making the original appointment, or the village commission member's successor in office shall appoint the board member to serve during the new board term. If, for any reason, an appointment should not be made to fill an expired term, the incumbent will continue to serve until his successor has been appointed. No board member shall serve on any other board or commission of the village while holding this office. No board member who shall have served three (3) consecutive terms in office shall be eligible to serve an additional term of office for two (2) years thereafter, unless the appointment for any additional term shall be confirmed by a majority of the commission.

(b) Vacancies. In the event of the death, removal or resignation of a member, a successor shall be appointed to fill the unexpired term by the commission member making the original appointment.

(c) Chairman. The board shall elect its own chairman, who shall serve as chairman at the will of the board.

(d) Rules and regulations. The board of parks and parkways shall prescribe and adopt rules and regulations for proceedings hereunder:

(1) Meetings of the board shall be open to the public.

(2) The board of parks and parkways shall keep minutes of its proceedings showing the vote of each member on each question or, if absent or failing to vote, indicating that fact, and shall keep records of its proceedings and other official actions, all of which shall be immediately filed with the village clerk and shall be a public record.

(3) The majority vote of those present is deemed necessary to act with a quorum consisting of three (3) members.

(e) Authorization for consultant or support services. The board shall act as an advisory board to the commission and all consultant or support services to be furnished to the board must be requested from and approved by the village commission or their designee prior to the services being secured.

(f) Duties and responsibilities. The board's duties and responsibilities shall be as follows:

(1) To study the existing system of parks and parkways and to make recommendations for their improvement;



(2) To make special studies and surveys as requested by the village manager or commission and advise and make recommendations accordingly;

(3) To study the land area of the village and make recommendations to the commission or the village manager on the possible acquisition of parcels of land which appear to be desired extensions of the village's parks and parkways system.

(Ord. No. 2007-2, § 1, 3-6-07)

#### Sec. 2-32. Ecology board.

(a) Board created. The ecology board shall consist of five (5) members appointed by each member of the commission for staggered three-year terms. Members shall be qualified electors of the village. Upon the expiration of a board member's term, the village commission member making the original appointment, or the village commission member's successor in office shall appoint the board member to serve during the new board term. If, for any reason, an appointment should not be made to fill an expired term, the incumbent will continue to serve until his successor has been appointed. No board member shall serve on any other board or commission of the village while holding this office. No board member who shall have served three (3) consecutive terms in office shall be eligible to serve an additional term of office for two (2) years thereafter, unless the appointment for any additional term shall be confirmed by a majority of the commission.

(b) Vacancies. In the event of the death, removal or resignation of a member, a successor shall be appointed to fill the unexpired term by the commission member making the original appointment. In the event the original commission member is no longer in office, his successor shall fill the unexpired term.

(c) Chairman. The board shall elect its own chairman, who shall serve as chairman at the will of the board.

(d) Rules and regulations. The ecology board shall prescribe and adopt rules and regulations for proceedings hereunder:

(1) Meetings of the board shall be open to the public.

(2) The ecology board shall keep minutes of its proceedings showing the vote of each member on each question or, if absent or failing to vote, indicating that fact, and shall keep records of its proceedings and other official actions, all of which shall be immediately filed with the village clerk and shall be a public record.

(3) The majority vote of those present is deemed necessary to act with a quorum consisting of three (3) members.

(e) Authorization for consultant or support services. The board shall act as an advisory board to the commission and all consultant or support services to be furnished to the board must be requested from and approved by the village commission or their designee prior to the services being secured.

(f) Duties and responsibilities. The board's duties and responsibilities shall be as follows:

(1) To be receptive to ideas and desires of the residents of the village as to the beauty and quality of life in their village;

- (2) To make special studies and surveys as requested by the village manager or commission and advise and make recommendations accordingly;
  - (3) To enlist and encourage public support, the assistance of civic, technical, scientific and educational organizations, and cooperation of other businesses or organizations in order to implement programs and projects approved by the village commission. Also, to render all possible cooperation to the state, federal, county or other government agencies in order to implement any program or project approved by the village commission;
  - (4) To represent the village before any type of board or forum where it is necessary for that board to inquire about the public opinion of the environment of the village;
  - (5) To maintain all information, data and exhibits which may be gathered relating to the quality of life within the village for use and benefit of any and all village residents; and
  - (6) To identify existing and potential environmental problems and recommend appropriate actions, with a view towards minimizing adverse external influences by cooperating with the adjacent municipalities and the county to protect common natural resources.
- (Ord. No. 2007-3, § 1, 3-6-07)

(7) At the same time that the results of the elections are certified to the department of state, the canvassing board shall file a report with the division of elections on the conduct of the election. The report shall contain information relating to any problems incurred as a result of equipment malfunctions either at the precinct level or at a counting location, any difficulties or unusual circumstances encountered by the canvassing board, and any other additional information which the canvassing board feels should be made a part of the official election record.

(Ord. No. 2007-21, § 1, 11-27-07)

Secs. 2-34--2-45. Reserved.

## ARTICLE VII. CODE ENFORCEMENT\*

Sec. 2-102. Qualifications of officers and removal; organization.

- (a) The county manager shall create a hearing officer review board, comprised of three (3) members from code enforcement departments, one (1) member from the county clerk's office, two (2) members from the public at large, and one (1) member from the office of the county attorney. The duty of the board shall be to recommend new hearing officer appointments and review, on an annual basis, the performance of hearing officers and, as necessary recommend the removal or reappointment of hearing officers to the county manager.
- (b) The hearing officer review board shall use as its basis for recommendation for appointment, criteria to be developed by the review board for approval and concurrence of the county manager and clerk of the board of county commissioners. Such appointments by the county manager shall be submitted to the clerk of the board for ratification by the clerk.

(c) Hearing officers shall be residents of Miami-Dade County who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the county manager, or his designee, upon recommendation of the hearing officer review board and on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the clerk of the board of county commissioners for ratification by the clerk.

(d) The county manager or his designee shall appoint as many hearing officers as are deemed necessary. Appointments shall be made for a term of two (2) years. Upon recommendation of the hearing officer review board, any hearing officer may be reappointed at the discretion of the county manager, subject to ratification by the clerk of the board of county commissioners. There shall be no limit on the number of reappointments that may be given to any individual hearing officer; provided, however, that a determination as to removal or reappointment must be made for each individual hearing officer at the end of each of his or her two-year term. The county manager shall have authority to remove individual hearing officers with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.

(e) The Miami-Dade County Attorney's Office shall serve as general counsel to the hearing officers. If an appeal hearing is held pursuant to section 2-108, the county attorney's office shall represent the county at such proceedings.

(Ord. No. 299, § 1(Exh. A), 1-5-99)

## **TWELFTH ORDER OF BUSINESS**

**12A**

**VILLAGE OF BISCAYNE PARK**  
**PUBLIC NOTICE OF 2010 HOLIDAYS**

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<u>DATE</u>	<u>HOLIDAY</u>
January 1, 2010 (Friday)	New Year's Day
January 18, 2010 (Monday)	M.L. King Jr. Day
May 31, 2010 (Monday)	Memorial Day
July 5, 2010 (Monday)	Independence Day
September 6, 2010 (Monday)	Labor Day
October 11, 2010 (Monday)	Columbus Day
November 11, 2010 (Thursday)	Veterans Day
November 25, 2010 (Thursday)	Thanksgiving Day
November 26, 2010 (Friday)	Day After Thanksgiving
December 24, 2010 (Friday)	Christmas Day
December 31, 2010 (Friday)	New Year's Day 1/1/2011

Mayor,

Per our conversation, below is a sample of adjacent municipalities and Miami Dade County who are off President's Day. Additionally, Public Works is off, as is Police. Essential Police on duty non administrative will get paid regular and Holiday Pay. My recommendation will be to open the Recreation center with Part time staff, as we do when kids are out of school, and close Village Hall. Thanks.

We have also heard back from these other municipalities who are closed;

Doral-off

Palmetto Bay-off

South Miami-off

Coral Gables-off

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**From:** Sira Ramos [mailto:sramos@biscayneparkfl.gov]

**Sent:** Tuesday, January 05, 2010 11:32 AM

**To:** villagemanager@biscayneparkfl.gov

**Subject:** Presidents Day update

Ms. Garcia,

As per our conversation the following municipalities that are in our vicinity will be closed Presidents Day Feb 15, 2010.

Aventura – off

Bal Harbor – off

Bay Harbor – off

El Portal – off

Golden Beach – off

Miami Shores – off

Miami Dade County – off

City of Miami - off

North Miami – off

N Miami Beach – off

Surfside – off

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1/5/2010

**12B**





## MEMORANDUM

**TO:** Honorable Village Commission  
Ana M Garcia, Village Manager  
Kim Prenter, Village Clerk  
John J Hearn, Village Attorney

**FROM:** Robert Anderson , Commissioner

**RE:** Deadline for Submittal of agenda items

**DATE:** January 6, 2010

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### **REQUEST:**

Establishing a deadline for providing agenda items to the Village Manager's office in advance of Village Commission meetings will allow for the timely preparation of the agenda and will allow staff, Commissioners and residents time to prepare for meetings which should encourage resident participation and shorten meeting times and improve efficiencies at the staffing level.

**Budget impact:** Positive impact on budget by cutting down amount of time it takes staff to prepare agenda. Further costs will be saved with the shortening of meeting times, therefore cutting down on hourly staff rates.

**RECOMMENDATION:** Manager recommendation is to approve

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**RESOLUTION NO. 2010-5**

A RESOLUTION OF THE VILLAGE COMMISSION OF THE  
VILLAGE OF BISCAYNE PARK, FLORIDA, ESTABLISHING  
A TIMELINE FOR AGENDA ITEMS TO BE RECEIVED BY  
THE MANAGER'S OFFICE IN ORDER TO BE PLACED ON  
REGULAR COMMISSION MEETING AGENDA; PROVIDING  
FOR EXCEPTIONS WHEN DETERMINED TO BE AN  
EMERGENCY BY THE VILLAGE MANAGER OR MAYOR;  
PROVIDING FOR AN EFFECTIVE DATE

12 WHEREAS, establishing a deadline for providing agenda items to the Village Manager's  
13 office in advance of Village Commission meetings will allow for the timely preparation of the  
14 agenda and will allow staff, Commissioners and residents time to prepare for meetings which should  
15 encourage resident participation and shorten meeting times; and

16 WHEREAS, in order to increase openness and transparency and to increase resident  
17 involvement in decision-making, the Village Commission believes that establishing a deadline for  
18 adding agenda items is in the best interests of the residents of the Village of Biscayne Park; now,  
19 therefore

20 BE IT RESOLVED BY THE COMMISSION OF THE VILLAGE OF BISCAYNE  
21 PARK, FLORIDA, THAT:

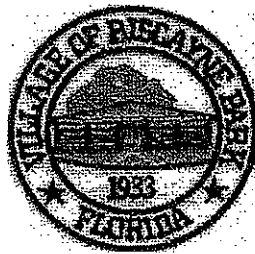
22 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being  
23 true and correct and hereby made a specific part of this Resolution upon adoption hereof.

24 **Section 2.** Agenda items must be provided to the Village Manager at least ten (10) days  
25 prior to regular Commission meetings.

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29 (the remainder of this page left blank intentionally)



**12C**



## MEMORANDUM

**TO:** Honorable Village Commission  
Ana M Garcia, Village Manager  
Kim Prenter, Village Clerk  
John J Hearn, Village Attorney

**FROM:** Bryan Cooper , Commissioner

**RE:** Consideration of requesting proposal of service from Recyclebank

**DATE:** January 6, 2010

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**REQUEST:** A consideration of requesting proposal of service from the same recycling company that is used by the City of North Miami.

Please see attached information as provided by

## **North Miami (Florida) First in Southeastern United States to Partner with RecycleBank**

Written by RecycleBank Published: February 05, 2009

RecycleBank Will Help Promote Sustainability by Increasing Recycling Participation in North Miami

New York, NY – February 5, 2009 - In an effort to build a more sustainable community, the City of North Miami (FL) has partnered with RecycleBank®, a rewards program that motivates individuals to recycle. The program is based on the city's ongoing "Green Initiatives", spearheaded by North Miami Mayor Kevin A. Burns. North Miami is the first community in the Southeastern United States to deploy the RecycleBank program.

RecycleBank motivates households and communities to recycle by rewarding each household for the amount they have recycled. RecycleBank measures the amount of material recycled and then converts that amount into RecycleBank Points that can be used at hundreds of local and national RecycleBank Reward Partners.

With RecycleBank, North Miami homes are provided a new 96-gallon wheeled recycling cart. Each cart will have an electronic barcode which matches the cart to the household address and account number, while tracking recycling activity. Upon activating their account with RecycleBank, either online or by phone, the household will begin to earn RecycleBank Points based on the amount of recycling with each bi-weekly curbside recycling service pickup.

Active RecycleBank members can redeem their RecycleBank Points online at [www.recyclebank.com](http://www.recyclebank.com), where they can also learn about their personal environmental impact through recycling. Residents can also access their account information by calling the RecycleBank Customer Care Center, 1.888.727.2978. RecycleBank Points can be redeemed for rewards, gift cards, groceries and products with national RecycleBank Partners such as Coca-Cola, Kraft Foods, Kiss My Face, and CVS/pharmacy, as well as local participating North Miami businesses, such as Publix, Winn Dixie, Barbeque Beach, the Miami Seaquarium, Pizza Fusion and Biscayne Fitness Forum. There is also an option to donate RecycleBank Points to local school environmental programs and non-profit organizations.

Mayor Burns views RecycleBank as meaningful value for the residents of North Miami, knowing that on average, members will earn hundreds of dollars in reward value each year through their recycling efforts.

"We consider North Miami a beautiful place to live and unique in our offerings," said Mayor Burns. "Working with RecycleBank will enable us to meet our recycling goals while giving something back to our residents. During these tough economic times, saving money on groceries, clothing or even free movie tickets is of significant value."

"The City of North Miami has set many goals in order to become a more sustainable city. Partnering with RecycleBank will both increase our recycling rates and lower our waste output," Mayor Burns explained. "Our partnership with RecycleBank brings a proven recycling rewards program to our community and allows us to take the necessary steps to achieving our sustainability goals."

Currently, RecycleBank is servicing over 250,000 households across 15 states. These households have cumulatively saved over 1.3 million trees and over 86 million gallons of oil through their recycling efforts.

"As RecycleBank continues to expand across the United States, our vision of rewarding households for recycling is becoming a reality," said Ron Gonen, CEO of RecycleBank. "Mayor Burns of North Miami recognized the value that RecycleBank brings to communities by helping them reach their environmental goals, putting savings in their residents' pockets and invigorating the local business community."

###

### **About RecycleBank**

RecycleBank is a rewards program that motivates people to recycle. We do this by quickly and easily measuring the amount of material each home recycles and then converting that activity into RecycleBank Points that can be used at hundreds of local and national rewards partners. RecycleBank is simple to implement, market-driven, and proven to work; saving municipalities' money and rewarding citizens for their environmental stewardship. Kleiner, Perkins, Caulfield and Byers, RRE Ventures, The Westly Group and Sigma Partners are institutional shareholders. Ron Gonen, the co-founder and CEO, is the largest individual shareholder. RecycleBank, a 2009 World Economic forum Tech Pioneer, is headquartered in New York City and also maintains an office in Philadelphia. Visit [www.recyclebank.com](http://www.recyclebank.com) for more information.

### **About North Miami, Florida**

North Miami, Florida (pop. 60,000) is a diverse community, ideally located midway between Miami and Fort Lauderdale. As the fifth largest city of Miami-Dade County, North Miami is committed to growth in its business community, while also focusing on issues such as education, the arts, leisure activities and sustainability to provide a viable future for our residents and to preserve the city's rich history since its incorporation in 1926.

## **FOURTEENTH ORDER OF BUSINESS**

**14B.2**



## MEMORANDUM

**TO:** Honorable Village Commission  
Ana M. Garcia, Village Manager  
Kim Prenter, Village Clerk

**FROM:** John J. Hearn, Village Attorney

**RE:** Consideration of Amending Section 15.1.10 of the Land Development Code

**DATE:** January 6, 2010

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### **BACKGROUND:**

Chapter 15 of the Land Development Code sets forth procedures for enforcement of the Village Code. The code enforcement procedures which are provided for in Chapter 15 are consistent with the requirements of state law for a code enforcement board. Section 15.1.10 entitled, "Fines; Liens", provides that the Village may not impose a fine in excess of \$15,000 per violation unless the Code Enforcement Board finds the violation to be irreparable or irreversible in nature.

This limitation is not provided for in state statute nor is it typically provided for in municipal codes. I have been approached by the Village's Code Enforcement Officer who has stated that compliance has been made more difficult because of that limitation of fine.

Many municipalities have found that the accrual of the fines in larger amounts assist them in reaching code compliance agreements and enforcement.

### **RECOMMENDATION:**

That the Village Commission consider whether it wants to eliminate the cap on Code Enforcement liens by amending Section 15.1.10 of the Code.